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Bord  
Pleanála

## Inspector's Report ABP-302193-18

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<b>Type of Appeal</b>	Section 11(3) Appeal against a notice under section 11(1).
<b>Location</b>	Between 274 & 290 South Circular Road, Dublin 8 (Former John Players Site).
<b>Planning Authority</b>	Dublin City Council.
<b>Planning Authority VSL Reg. Ref.</b>	VS/0045.
<b>Site Owner</b>	Players Square Limited (in receivership).
<b>Date of Site Visit</b>	18 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 between 274 & 290 South Circular Road, Dublin 8 (Former John Players Site) 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 of the appeal is the former Player's Wills factory, which is located on the northern side of South Circular Road (SCR) and south of Donore Avenue. The area immediately surrounding the site on SCR consists almost exclusively of 2-storey Victorian dwellings, Donore Avenue is mainly residential with some small neighbourhood shops, a community centre, a school and 2 churches.
- 2.2. The appeal site consists of a 3-storey former factory building with an attached warehouse behind. These buildings occupy the central portion of the site and are set back about 5-6m from the SCR in line with the established building line of the adjoining terraces. There are two smaller office type and storage buildings alongside the eastern boundary and parking areas to the north. The site is roughly wedge shaped. The factory buildings are currently vacant and show signs of neglect, a warehouse building is used as a film/sound studio.

## **3.0 Statutory Context**

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

- 3.1.1. The Notice issued in relation to section 11(1) of the 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 Z14 – 'To seek the social, economic and physical development and/or rejuvenation of an area with mixed use, of which residential and 'Z6' would be the predominant uses' and identified as a Strategic Development and Regeneration Area (SDRA 12). 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 **3130/06** and ABP reference **PL29S.221190**. Demolition of building and construction of mixed development of office units, 13 no. retail units, supermarket, 2 no. restaurant, school, creche, community centre, 484 apartments. April 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 Z14 – ‘To seek the social, economic and physical development and/or rejuvenation of an area with mixed use, of which residential and ‘Z6’ would be the predominant uses’. The site is classified as residential land and has been vacant or idle for the last 12 months. The site is located in an area in need of housing, the site is suitable for housing and the majority of the site is vacant. No enforcement history. The report is supported by colour photographs.

5.1.2. Response to Submission Report – The report responds to the section 11 Notice submission made by the landowner, as follows: the lands are residential lands the tests for regeneration lands were not applied by the planning authority, no permission can be found for a television studio and so no regard is had to that current use. The site is a vacant site and conforms with the criteria under section 5(1)(a) of the 2015 Act.

### 5.2. Planning Authority Notice

5.2.1. Dublin City Council advised the site owner that the subject site (Planning Authority site ref. VS-0045) 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 2 July 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:

- Given the brownfield nature of the site and the intricacies of Strategic Development and Regeneration Areas (SDRAs) Z14 lands should be considered as regeneration lands for the purpose of the Vacant Sites Levy.
- The advancement of a planning application would have been premature pending the outcome of the St Teresa's Gardens Development Framework, endorsed by the elected members of the Council on the 3 August 2017. Ongoing design work with a view to progressing the redevelopment of the site continues.

### **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 1 January 2018.
- 7.1.2. The purpose of a section 11 appeal is 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 site on the register are not subject to the appeal. Consequently, on the whole 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 objective Z14 – ‘To seek the social, economic and physical development and/or rejuvenation of an area with mixed use, of which residential and ‘Z6’ would be the predominant uses’ and identified as a Strategic Development and Regeneration Area (SDRA 12). 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)(a) of the Act, residential land, given that residential and enterprise/employment are the predominant land uses envisaged.
- 7.1.4. The appellant states that the site should be assessed in the context of section 5(1)(b) of the 2015 Act, i.e. regeneration lands. This assertion is based upon the brownfield nature of the site and the Z14 zoning that seeks a mix of residential and enterprise/employment uses. In addition, the appellant feels that any planning application for the redevelopment of the site would have been premature pending the adoption of St Teresa’s Gardens Development Framework, endorsed by elected members August 2017. Since the emergence of a development framework for the

area, the appellants have been working towards the preparation of a planning application.

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. Residential or Regeneration

7.2.1. The appellant has stated that they believe the site should be assessed under the criteria set out by section 5(1)(b) of the 2015 Act, regeneration land. The planning authority take the opposite view and state that the City Development Plan is clear that Z14 lands should be considered as residential for the purposes of the vacant sites register, section 14.9 of the CDP refers, as follows:

*The following lands zoned for residential or primarily residential purposes are included for the purposes as set out in the Urban Regeneration and Housing Act 2015 in relation to the vacant land levy:... Strategic development and regeneration areas (Z14 zones) are included as these are the crucial redevelopment and regeneration areas in the city.*

I note that Z14 lands are not listed under heading 2 in the CDP, lands in need of regeneration. I am satisfied that the planning authority have correctly assessed the appellant's lands in the context of residential lands. In addition, I have noted the appellant's original submission (dated 27 June 2018) to the planning authority in relation to the section 11 notice. I find there to be no obvious defect in the section 11 notice served by the planning authority and I am satisfied that the site is a residential site for the purposes of the Act.

### 7.3. Vacant Site

- 7.3.1. 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 shows all the indications of a vacant site, for the most part. The majority of the factory buildings are vacant and show no signs of recent use, some windows are broken, however, the building is secure and has a broadly satisfactory external appearance. The warehouse building to the north of the site, would appear to be in use as a film/sound studio. The planning authority have stated that permission for such a use cannot be found, though there is no enforcement action attached to the site.
- 7.3.2. The 2015 Act states that in such a case, the determination of the Planning Authority or the Board on appeal that the site is or is not vacant/idle is governed by section 6(7) of the 2015 Act. The relevant section of the Act states that in the determination of whether a site was vacant or idle for the duration of 12 months, the Board on appeal shall not have regard to any unauthorised development or use. I note that the Act refers to the 12 month period and also refers to the determination of section 6, the registration of vacant sites. In my view to confine the scope of assessment to just the *registration* of vacant sites would be a narrow interpretation of the intention of the Act. It should logically follow that reference to unauthorised development should also be a consideration in section 11 appeals. In any case, even if the film/studio use of the warehouse building was had regard to, such use would only comprise a minority



portion of the site and so would not tilt the balance in favour of full use of the site. I am satisfied that the majority of the site is a vacant site in accordance with section 5(1)(a)(i) of the 2015 Act, as amended.

#### 7.4. Housing Need and Site Suitability for Housing

7.4.1. The appellant has not appealed whether there is a need for housing in the area or if the site is suitable for housing. The appellant has however, suggested that an application for development would have been premature pending the delivery of a framework plan for the area. I note that planning permission was granted for a large mixed use scheme, that included a large number of apartments, now withered. This suggests that the site is suitable for housing. The site is zoned for housing, this suggests that there is a need for housing in the area. I am satisfied that the appeal site accords with requirements of section 5(1)(a)(i) and (ii) of the 2015 Act as amended.

7.4.2. The appellant's contention that the lodgement of a planning application for the site would have been premature pending the publication of a framework plan for the area is in my view of little consequence in this instance. The 2015 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.*

So, in this instance there is no extant permission or a current planning application for residential development. It is for this and other reasons that the site meets the criteria for inclusion on the VSR and the intention of making a planning application, though encouraging, has no part to play in this instance.

7.4.3. The placement of a site on the register requires three criteria to be fulfilled under section 5(1)(a)(i), (ii) and (iii) of the 2015 Act. I would advise the Board that there have been recent amendments to the Urban Regeneration and Housing Act 2015 as a result of the Planning and Development (Amendment) Act 2018. Specifically, section 5 of the Act of 2015 is amended, in paragraph (a) of subsection (1), by substituting the following subparagraph for subparagraph (iii):

*“(iii) the site, or the majority of the site is—*

*(I) vacant or idle, or*

*(II) being used for a purpose that does not consist solely or primarily of the provision of housing or the development of the site for the purpose of such provision, provided that the most recent purchase of the site occurred—*

*(A) after it became residential land, and*

*(B) before, on or after the commencement of section 63 of the Planning and Development (Amendment) Act 2018.”.*

7.4.4. I am convinced that both sections 5(1)(a)(i) and (ii) of the 2015 Act are fully met; housing need and site suitability for housing. Furthermore, as detailed by me in paragraph 7.3, the site is a vacant site in accordance with section 5(1)(a)(iii)(I) of the 2015 Act. The amendment requires a site to be vacant/idle OR used for a purpose other than the provision of housing in terms of the most recent purchase in accordance with both parts (A) and (B). In this instance, the majority of the site is vacant and idle, parts (A) and (B) do not apply. I am satisfied that the site is vacant and idle and the site should remain on the register as all three requirements under section 5(1)(a) of the 2015 Act (as amended) have been met.

## **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 between 274 & 290 South Circular Road, Dublin 8 (Former John Players Site) as the site remains a vacant. Therefore, the entry on the Vacant Sites Register of the 1 January 2018 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) That the majority of the site was and is vacant, that there is a need for housing in the area, that the site is suitable for the provision of housing as demonstrated by the residential land use zoning for the area, and that insufficient reason is put forward to remove the entry from the Vacant Sites Register

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

16 November 2018