



An
Bord
Pleanála

Inspector's Report ABP-302326-18

Type of Appeal	Section 11(4) Appeal against a notice under section 11(1).
Location	Corner of Watling Street and Bonham Street, Dublin 8.
Planning Authority	Dublin City Council.
Planning Authority VSL Reg. Ref.	VS/0019.
Site Owner	Digital Hub Development Agency.
Date of Site Visit	07 January 2019.
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 the corner of Watling and Bonham Street, Dublin 8 in accordance with the provisions of section 11(1)(a) of the Urban Regeneration and Housing Act 2015.

2.0 Site Location and Description

- 2.1. The site of the appeal is located at the corner of Watling Street and Bonham Street in the centre of Dublin city. The site is in Dublin 8 and situated south of the River Liffey. Residential development is located around the site, specifically; the New Maltings Apartment complex is located to the north, the Binary Hub student accommodation is adjacent to the east and Emmet House flats are located to the south. The Guinness brewing complex is located to the west.
- 2.2. The site comprises a large two storey industrial building of brick construction with a number of gable pitched roofs. Almost the entire site is given over to buildings with a small delivery dock in the south eastern portion of the site. The building is in broadly fair condition; however, some windows are broken, rainwater goods are in poor repair and there are large areas of graffiti on doors and doorways.

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 Z5 – ‘To consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity’. 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 **3193/13**. Demolition of warehouse building and construction of a 493 bed space student accommodation, existing grain store building to be refurbished.

PA reference **4733/08** and ABP reference **PL29S.233446**. Mixed use development comprising office, retail/service units, hotel and student accommodation.

5.0 Planning Authority Decision

5.1. Planning Authority Reports

5.1.1. Register of Vacant Sites Report - The site is zoned under 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’. The site is classified as regeneration land and has been vacant or idle for the last 12 months. The site is vacant and has adverse effects on existing amenities and/or having an adverse effect on the character of the area. No enforcement history. The report is supported by colour photographs.

5.1.2. Response to Submission Report – None, however, a response from the planning authority dated 19 July 2018, referenced the validity of the section 11(1) notice.

5.2. Planning Authority Notice

5.2.1. Dublin City Council advised the site owner that the subject site (Planning Authority site ref. VS-0019) 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 19 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:

- The section 11(1) Notice issued by the planning authority is invalid as it was issued on the 31 May 2018, but received by the appellant on the 1 June 2018. The 2015 Act states the following: every planning authority shall, before 1 June 2018, or such later date in that year as the Minister may specify by order, give a written notice to the owner of any vacant site that stands entered on the register on 1 January 2018. This was not done and so the Notice is invalid and the entry on the register should be cancelled.

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 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 the site should be removed from the register because the section 11(1) Notice issued by the planning authority is invalid as it was received by the appellant on the 1 June 2018 and not before as required by the Act.
- 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, S.I. No. 374 of 2018 and dated 25 September 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.

7.1.6. In this instance, the notice was issued by the planning authority on the 31 May 2018, which is not later than the 1 June 2018 deadline set out in the original 2015 Act and certainly not later than the 1 November 2018 deadline set by S.I. No. 374 of 2018. I am satisfied that the planning authority issued the relevant notices in a valid and timely manner and in accordance with the 2015 Act.

7.2. Vacant or Idle

7.2.1. The appellant has not set out any grounds of appeal with regard to the condition of the lands and has relied solely on the validity of the section 11(1) Notice, which I have already accepted as being a valid notice. In the interests of fair process, I intend to assess the site in the context of Section 5(1)(b) of the Act, that states:

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.

7.2.2. With respect to the vacant or idle condition of the site, I can confirm that the site shows all the indications of a vacant site. As can be determined from the site exterior, the majority of the buildings are vacant and show no signs of recent use, some windows are broken, most are located behind wire grills and some are bricked up as originally intended. There is graffiti on sliding doors and boarded up entrance points. But, there is also graffiti in other locations in the vicinity too, most noticeably on the boundary walls of the Guinness complex. The internal delivery yard in the south eastern portion of the site is overgrown and appears disused. I am satisfied that the site is vacant or idle.

7.3. Adverse Effects

7.3.1. With respect to section 5(1)(b)(ii) of the Act, 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.

7.3.2. The first matter is that of the 'land or structures in the area were, or are, in a ruinous or neglected condition'. The exterior condition of the buildings can be best described as fair, they are not ruinous but show signs of neglect. For example, some windows

are broken and not repaired, some rainwater goods are failing and allowing water to penetrate the fabric of the building and graffiti has been allowed to remain on prominent surfaces. I did not observe examples of ruin or neglect in the wider area that would have an adverse effect on the area's character. The building exterior is neglected when compared to adjacent properties and in my mind, contributes to adverse effects on the character of the area, I am satisfied that the site meets section 6(6)(a) of the 2015 Act.

7.3.3. In relation to section 6(6)(b) '*anti-social behaviour was or is taking place in the area*', I note that there is obvious evidence of graffiti on the structures of the appeal site and on other buildings and structures in the area. I must conclude that even though anti-social behaviour is probably taking place in the vicinity, it cannot be solely attributed to the vacant nature of the subject building. Whilst the building exterior is neglected and anti-social behaviour is probably taking place in the area, I do not consider it would meet with part (b) above.

7.3.4. 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. However, given that the test in Section 6(6)(a) is met I consider that the site meets the tests outlined in Section 5(1)(b)(ii).

7.3.5. Finally, a section 11 appeal requires the Board to determine if a site is no longer a vacant site. Given, the foregoing, I am satisfied that the site has not altered to any great degree from that when entered onto the register to indicate that the site is no longer a vacant site.

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 at the corner of Watling Street and Bonham Street as the site remains a vacant site.

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) 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.

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.

Stephen Rhys Thomas
Planning Inspector

08 January 2019