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Bord  
Pleanála

## Inspector's Report ABP-302330-18

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<b>Type of Appeal</b>	Section 9 Appeal against section 7(3) Notice
<b>Location</b>	Carnlough Road (former CIE Lands), Dublin 7
<b>Planning Authority</b>	Dublin City Council North
<b>Planning Authority VSL Reg. Ref.</b>	VS0464
<b>Site Owner</b>	Crekav Trading GP Limited
<b>Planning Authority Decision</b>	Place on Register
<b>Date of Site Visit</b>	21 December 2018
<b>Inspector</b>	Una Crosse

## 1.0 Introduction

This appeal refers to a section 7(3) notice issued by Dublin City Council in respect of a site at Carnlough Road, known as the former CIE lands, in Dublin 7. The subject site was entered on the Vacant Site Register on 16<sup>th</sup> July 2018 on the basis that the site was vacant under Sections 5(1)(a) and 5(1)(b) of the Act. The Notice was issued to Crekav Trading GP Ltd.

## 2.0 Site Location and Description

The site has a stated area of approximately 4 hectares and is known as the former CIE lands. It is located between Carnlough Road and Fassaugh Avenue in Dublin 7. The site comprises a long strip of land which is adjoined to the east by the rail line, to the south there is a narrow strip of ground addressing the Cabra Road. To the west the site adjoins the rear gardens of properties which address Carnlough Road with part of the site addressing the Road itself and to the north the site adjoins the rear of properties which address Fassaugh Avenue.

## 3.0 Statutory Context

### 3.1. URH ACT

- 3.1.1. The Notice issued under Section 7(3) of the Act states that the PA is of the opinion that the site referenced is a vacant site within the meaning of Section 5(1)(a), Section 5(1)(b) and 5(2) of the Act. The Board should note that both sections of the Act relating to residential and regeneration are included. The Notice is dated 16<sup>th</sup> July 2018 and is accompanied by a map outlining the extent of the site to which the Notice relates.
- 3.1.2. Section 5(1)(a) of the Act stated that a site is a vacant site if, in the case of a site consisting of residential land:-
- (i) the site is situated in an area in which there is a need for housing,
  - (ii) the site is suitable for housing, and
  - (iii) the site, or the majority of the site, is vacant or idle.

3.1.3. It is noted that Section 5(1)(a)(iii) has been amended by Section 63 of the Planning and Development (Amendment) Act 2018 which commenced upon coming into effect of the Act (19 July 2018). This section of the Act amends Section 5 of the Act of 2015 by substituting Section 5(1)(a)(iii) for the following:

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*".

3.1.4. 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.

### 3.2. **Development Plan Policy – Dublin City Development Plan 2016-2022**

3.3. The site has two zonings. The majority of the site is zoned Z1 residential. The southern section of the site is zoned Z3 – neighbourhood centres.

3.4. **Section 14.9** of the DCC development plan states that the VSL will apply to lands zoned Z1, Z2, Z3, Z4, Z5, Z6, Z7, Z8, Z10, Z12 and Z14.

3.5. **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.

## 4.0 Planning History

- 4.1. **Ref. ABP-300492-17** – permission was granted under the Strategic Housing Development Act 2017 for 419 apartments and 1 house in March 2018.
- 4.2. **Ref. 2387/16** – permission granted for 321 units in 2017.

## 5.0 Planning Authority Decision

### 5.1. Planning Authority Reports

- 5.1.1. The report which is undated refers to an inspection date of 16 August 2016. It outlines the site details, location, planning history, zoning and ownership. Sections 5(1)(a) and 5(1)(b) of the Act are outlined. It is stated that the site is located in an area where there is a need for housing and is suitable for same. It states that the site is idle and by virtue of the poor state of the boundary treatment and landscaping is having an adverse effect on the character of the area and it is considered that the site should be placed on the Register.
- 5.1.2. A letter dated 13<sup>th</sup> July 2018 refers to the correspondence received from the application to the Section 7(1) notice. It states that DCC had conducted a road side inspection of the site and from this inspection that elements of the extant planning permission have taken place. It references the owners statement that it was intended to commence works in late 2018 but that the site is not currently under construction

(July 2018) and remains vacant and it is considered appropriate to place it on the Register.

## 5.2. **Planning Authority Notice**

5.3. Planning Authority decided under section 7(3) to issue a notice stating that the PA is of the opinion that the site is a vacant site within the meaning of Sections 5(1)(a) and 5(1)(b) of the Act.

## 6.0 **The Appeal**

### 6.1. **Grounds of Appeal**

The appellant's grounds of appeal are summarised as follows:

- Relevant provisions of the Act outlined;
- Permission recently granted under SHD provision for a residential development including 419 apartments with the appellant currently in the process of preparing compliance submissions with a view to starting construction on site in late 2018;
- Pre-commencement, site hoarding and site clearance works have already taken place under a first phase of development;
- Permission previously granted for 321 units in 2017 with permission granted under that permission for the demolition of No's 2 & 4 Carnlough Road which has taken place in last 6 months with site not idle over past 12 months as works have taken place under previous permission;
- Given site has only recently been granted permission submitted that entry is not reasonable in this instance with works carried out in last 6 months and therefore site not idle;
- Site clearance work expected to commence imminently to comprise the removal of additional spoil heaps on site;
- In relation to Section 6 of the Act, the site or structures is not in a ruinous or neglected condition with site subject to regular security visits and has been enclosed by branded hoarding to prevent access and potential anti-social behaviour;

- Iarnród Éireann in regular use of the main gate from Cabra Road to the site in order to access the adjacent Phoenix Park tunnel railway line;
- The previous houses on site (No's 2 & 4) were in a ruinous condition and neglected but have been demolished in the last year to facilitate construction and has increased quality of the environment of the site;
- Demolition works undertaken constitute development under the Act with requirements of Section 5(1)(b)(ii) not satisfied with site not lying idle in last 12 months given demolition undertaken;

## 6.2. Planning Authority Response

A response to the appeal was received from the Planning Authority and is summarised as follows:

- Owner relies on extant SHD permission from the board outlining future intentions for the sites development;
- Appendix 3 of Circular PL7/2016 (Implementation of the Vacant Site Levy) states that an extant permission is not a consideration in determining whether to apply the levy;
- Three criteria under Section 5(1)(a) and the two criteria in 5(1)(b) have been met;
- Request that the Board note the unsightly spoil heaps clearly visible between housing along Carnlough Road and Fassaugh Road (Avenue) photographed in previous correspondence sent to the Board;
- Site has two relevant extant permissions with a minor element of the first taken place to date, that being the demolition of the two houses, with owners using this very minor element of works to claim the site has not been idle;
- Comparing footprint of the two houses with overall site reasonable to conclude that majority of the site remains idle;
- Accepted that hoarding taken place there is no construction taking place on the site confirmed in correspondence from the owners dated 13 August 2018 where they state that they are in process of preparing compliance submissions;
- With no use (construction or otherwise) on the site, the site remains vacant for the purposes of the vacant site levy.

## 7.0 Assessment

- 7.1. While not raised by the appellant in this instance, of primary interest and concern I would suggest is that the Section 7(3) Notice was issued under both Sections 5(1)(a) and 5(1)(b) of the Act. Both of these sections of the Act are clearly outlined in Section 3.1 above. A slight majority of the site, the part to the north and a strip to the south addressing the Cabra Road is zoned for residential development and therefore the tests outlined in Section 5(1)(a) would apply. The southern almost half of the site is zoned Z3, neighbourhood centre and therefore the tests under Section 5(1)(b) apply.
- 7.2. In the report prepared to inform placing the site on the Register it is stated that the site is located in an area where there is a need for housing and is suitable for same. It states that the site is idle and by virtue of the poor state of the boundary treatment and landscaping is having an adverse effect on the character of the area and it is considered that the site should be placed on the Register. In response to the appeal it is stated that three criteria under Section 5(1)(a) and the two criteria in 5(1)(b) have been met. The PA then requests that the Board note the unsightly spoil heaps clearly visible between housing along Carnlough Road and Fassaugh Road (Avenue) photographed in the previous correspondence sent to the Board.
- 7.3. The PA do not outline the areas of the site which apply to each within the map attached to the Notice nor within their report. One of the concerns I have is that reference is made to unsightly spoil heaps clearly visible between housing along Carnlough Road and Fassaugh Road (Avenue). This area of the site is zoned residential where the tests relate to housing need, suitability and whether the site is vacant or idle. The tests for regeneration refer to matters of amenity but it is the southern part of the site that which is zoned Z3, to which the tests for regeneration apply. Furthermore, there is no consideration of the tests for section 5(1)(b) by reference to Section 6(6) of the Act which I consider is a primary consideration to determine whether the tests in Section 5(1)(b) are met. In this regard I consider that it is not appropriate to assess the site as one given the specific requirements of the two sections of the Act.
- 7.4. The most appropriate remedy, I would suggest, is for the planning authority to recommence the process of registration of this site in accordance with section 7 of the 2015 Act. 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 Notification may be questioned. Therefore, in the interest of natural justice I consider that the current entry should be cancelled.

## 8.0 Recommendation

I recommend that in accordance with section 9(5) of the Urban Regeneration and Housing Act 2015, the Board should cancel the entry on the register of site (VS-0464) at Carnlough Road, Dublin 7 was vacant or idle for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 16th July 2018 shall be removed.

## 9.0 Reasons and Considerations

### 9.1. 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,

(d) the inclusion of the site on the Register under both Section 5(1)(a) and Section 5(1)(b), which have distinct criteria, in the absence of adequate consideration of the distinct parts of the site and the specific tests outlined for each distinct for the purposes of the Act.

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

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Una Crosse  
Senior Planning Inspector

January 2019