



An
Bord
Pleanála

Inspector's Report ABP-302359-18

Type of Appeal	Section 11(4) Appeal against a notice under section 11(3)
Location	Site to rear of Croke Park Hotel, Jones Road, Dublin 3 (accessed off Jones' Road)
Planning Authority	Dublin City Council North
Planning Authority VSL Reg. Ref.	VS-0096
Site Owner	Pairc an Chrocaigh
Planning Authority Decision	Place on Register
Date of Site Visit	25 January 2019
Inspector	Una Crosse

1.0 Introduction

- 1.1.1. This appeal refers to a section 11(3) notice issued by Dublin City Council in respect of a site to the rear of the Croke Park Hotel, Jones's Road, Dublin 3 (accessed off Drumcondra Park). The Section 11(3) Notice, dated 24th July 2018 states that the site stands entered on the Vacant Sites Register.
- 1.1.2. The subject site was entered on the Vacant Site Register on 28 July 2017. The Section 7(3) Notice issued by DCC on that date was not appealed to An Bord Pleanala.

2.0 Site Location and Description

The site, which has a stated area of 0.48 hectares, comprises an area of ground located to the rear of the Croke Park hotel on Jones Road. There is an access from the site along its western boundary onto the access road which adjoins the side of the hotel which then leads onto Jones Road. There is an existing but unused access from the site to Drumcondra Park to the west of the site with a considerable level change between the overall ground level on the site and Drumcondra Park. The site is adjoined to the south by the Royal Canal and to the north by the rear of properties which address Russell Avenue. The site accommodates a shed structure and is concreted.

3.0 Planning Authority Decision

- 3.1. **Planning Authority Notice** Dublin City Council advised the site owner by way of letter dated 31st May 2018 enclosing a Section 11(1) Notice also dated 31 May 2018 which outlined the details of the site including a market valuation.
- 3.2. A response to same was received from the owner (dated 27th June 2018) stating that the site was not a vacant site having regard to the use of the site and the proposal to prepare a masterplan.
- 3.3. In response to same a Notice was issued under Section 11(3) of the Act dated 24th July 2018 referring to the response received and that a roadside inspection was undertaken on 20th July 2018. It stated that based on the submission and inspection that DCC was not satisfied that the site is no longer a vacant site and that the entry on the Register will not be cancelled.

3.4. Register of Vacant Sites Report – Original Report under Section 7(3)

- 3.4.1. The report of the Planning Authority is undated and unsigned but refers to a site inspection on 9th June 2016. It outlines the site details noting it is residential land for the purposes of the Act, that the site is serviced and that anti-social behaviour is evident. It also states that the ground levels of the site are noticeably below the level of the adjoining public road at Drumcondra Park. A detailed site description is provided. It states that on the date of inspection there was no activity on the site but that discussions indicate that the site is in regular use by Croke Park for the storage of various items such as heat lamps, hoists, trucks. It states that while no graffiti was evident from Drumcondra Park, the southern boundary wall facing the canal is extensively graffitied. The Z10 zoning is noted as is the planning history and enforcement history. The report concludes by reference to section 5(1)(a) of the Act and stating that the site is situated in an area in need of housing and is suitable for same. It states that having regard to the criteria above it is considered appropriate to include the site on the register.
- 3.4.2. A Section 7(3) Notice appears to have been issued but no copy has been provided by either the PA or the owner but the Dublin City Council Vacant Site Register states that the site was entered on the Register on 28 July 2017. No appeal was received by the Board on foot of the Section 7(3) Notice.

4.0 Planning History

- 4.1. **Ref. 4106/10** – permission granted to construct 2.4m high boundary wall and 2.7m high piers on south-western boundary of the site (site area also includes the Croke Park Hotel);
- 4.2. **Ref. 1559/08** – Temporary 3-year permission granted for use of the site as a car park (used solely in conjunction with Croke Park);
- 4.3. **Enforcement File – E01337/07** – enforcement file opened relating to corporate hospitality tents/structures/marquees in the open area to the rear of Jurys Croke Park Hotel – closed in March 2007 following removal of structures.

5.0 Statutory Context

5.1. URH Act

5.1.1. The Original Section 7(3) Notice for the site was issued under Section 5(1)(a) of the Act which refers to sites zoned for residential development.

5.1.1. 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.

5.1.2. 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*".

5.2. Dublin City Development Plan 2016-2022

5.2.1. The site is zoned Z10 – Mixed Uses - in the current City Plan.

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

5.2.3. **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.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The owner has submitted an appeal to the Board, against the decision of DCC to retain the entry on the Register. The grounds of the appeal can be summarised as follows:

- Reference to Section 14.9 of the City Plan which notes that Z10 lands are categorised under heading 1 being lands zoned primarily for residential or primarily residential purposes;
- Notice issued under Section 7(3) and provisions of Section 5(1)(a) with same relating to residential land;
- DCC state at Section 14.8.10 of the City Development Plan that mixed use is central to development or re-development of the site with mono uses not permitted with Section 14.3 noting the policy approach to Z10 was reviewed to encourage a mix of uses;

- Circular Letter PL7/2016 (Implementation of the Vacant Site Levy) notes at Appendix 3 that mixed use zonings could be included as part of areas in need of regeneration;
- Consider that the Section 7(3) notice is null and void as Z10 lands does not come within definition of Residential Land as the objective is not solely or primarily for residential purposes and Section 7(3) notice and entry on Register should be cancelled;
- Address of property on notice is incorrect as site is accessed via Jones' Road and not Drumcondra Park;
- Criteria set out in Section 5(1)(a) do not apply as property not residential land with the relevant tests within Section 5(1)(b) regeneration but if Board contend it is residential the statutory test in Section 5(1) of the Act as the site or the majority of the site is not vacant or idle for the 12 months prior to issue of the Section 7(3) Notice;
- Property is not vacant or idle having been acquired in March 1999 as a facility for storing heavy plant and machinery required as part of the functioning of Croke Park for playing games and events with the property having an established use for this purpose;
- Property cannot be classified as not occupied or empty as it houses a variety of pitch maintenance machinery including grow lights used on a day to day basis with a pitch maintenance log attached at Appendix D with Appendix E providing photographs of same with barriers for event days also stored on site with the majority of the property occupied;
- Property substantially upgraded since acquisition to include installation of electricity, demolition of ruinous structures, acquisition of freehold title, acquisition of additional land from CIE to secure boundary along rail line and construction of a wall along same with costings outlined in Appendix F;
- As part of stadium operations, activity on site moving plant and equipment for pitch growth and maintenance with site used a key part of event plan in storage of match related equipment on match days in addition to assembly of Gardai and Artane Band personnel;

- Site is key to preparation of the Stadium for concerts such as storing materials from the grounds such as fencing and goal posts with a Draft Works Schedule for stage preparations for the Michael Buble concert in July 2018 attached in Appendix G;
- Site has electricity supply to recharge grow lights housed on site;
- Access point from Drumcondra Park was historical access point and closed for many years with site accessed via Jones' Road;
- Consider site should be assessed under tests for regeneration in Section 5(1)(b)(ii) as determined by Section 6(6) with land or structures not in a ruinous or neglected condition with considerable money spent on refurbishing the existing garage building on the site;
- No anti-social behaviour taking place in the area as a result of the condition of the property with property enclosed by boundary walls and locked gates;
- No reduction in the number of habitable houses or number of people living in the area as outlined in report from Hooke and MacDonald Estate Agents (Appendix G):
- Refer the Board to decision on 29E.VV0029 where the Board determined that tests under Section 6(6) had not been met and placing on Register cancelled and provides a similar precedent for subject site;
- Site is not under-utilised with plans for redevelopment of the site as part of an overall masterplan for regeneration of certain properties within owners portfolio with owner the property holding company of the GAA whose primary focus is development of amateur sports with no interest in land banking or speculative development;
- Owner at advanced stage of completing detailed masterplan with site forming integral part of same with masterplan to be submitted to DCC in near future and following agreement in principle the necessary planning applications will be submitted for approval with owner committed to commencing work on site very soon after permission obtained;
- Previous correspondence with DCC outlined acceptability of providing reasonable undertakings of same;

6.2. **Response of Planning Authority to the Appeal**

6.2.1. No response received.

7.0 **Assessment**

7.1. **Procedure**

7.1.1. This site is currently on the Register having been placed on the Register on 28 July 2017, the original Section 7(3) Notice was not appealed to the Board. The Section 11(3) Notice proposes to retain the Site on the Register and this appeal relates to the intention to retain it on the Register. Therefore the role of the Board is to assess whether or not the site should remain on the Register. There are a number of matters of process or procedure which I consider require some consideration. Firstly, the zoning of the site and the appropriateness or otherwise to retain this Z10 site on the register under the provisions of Section 5(1)(a) of the Act. The appellants consider that the Section 7(3) notice is null and void as Z10 lands do not come within definition of Residential Land as the objective is not solely or primarily for residential purposes and Section 7(3) notice and entry on Register should be cancelled. I would refer the Board to Section 14.9 of the City Plan which outlines the two categories of site in the Act and clearly indicates which zonings within the City Plan are included for the purposes of residential or regeneration. Z10 lands, are clearly included as residential with a statement saying that Z10 mixed-use zones are included as they offer great potential for the significant supply of housing and employment space as set out in the zoning objective. I do not consider that there is any procedural issue with the issuing of the original Section 7(3) Notice on the basis of section 5(1)(a) of the Act on the basis that the City Plan clearly outlines this zoning to be included for residential purposes.

7.1.2. The appellants continue by stating that the criteria set out in Section 5(1)(a) do not apply as the property is not residential land with the relevant tests within Section 5(1)(b) regeneration but also state that if Board contend it is residential that the site or the majority of the site is not vacant or idle for the 12 months prior to issue of the Section 7(3) Notice. While as I outline above I consider that the issuing of the original Notice under Section 5(1)(a) is appropriate having regard to Section 14.9 of the City Plan I do not therefore consider that it is necessary, as suggested by the appellant,

to address the tests under section 5(1)(b), which relate to sites for regeneration, nor would that be possible, I would contend, as the Notice was not issued under this provision.

7.1.3. I would also note that the appellant refers to the site not being vacant or idle for the 12 months prior to issue of the Section 7(3) Notice. This appeal is not against the Section 7(3) Notice it is against the Section 11(3) notice where the requirement at Section 11(5) states where the Board determines that a site is no longer a vacant site with Section 11(4) stating that the burden of showing the site or a majority of the site is no longer a vacant site shall be on the owner of the site. Therefore I would suggest to the Board that the relevant period for the consideration of this appeal against the Section 11(3) notice is the current time.

7.1.4. I would also note that the appellant states that the address of the property on the notice is incorrect as the site is accessed via Jones' Road and not Drumcondra Park. While access stated may not be that which is ordinarily used, I would suggest that the address on the Notice, Site to rear of Croke Park Hotel, Jones's Road, Dublin 3 is the primary address with the access off Drumcondra Park in brackets and clearly a secondary consideration.

7.2. **Vacant or Idle**

7.2.1. The appellants do not challenge the matters of housing need or suitability for housing as set out in the Act and therefore given the location and context of the site I do not consider that it is necessary to address same. Therefore I propose that the relevant assessment should relate solely to Section 5(1)(a)(iii) of the Act that the site, or the majority of the site, is vacant or idle as amended by Section 63 of the Planning and Development (Amendment) Act 2018 which commenced upon coming into effect of the Act (19 July 2018) providing Section 5(1)(a)(iii) now states 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*".

7.2.2. The appellants state that the property is not vacant or idle having been acquired in March 1999 as a facility for storing heavy plant and machinery required as part of the

functioning of Croke Park for playing games and events with the property having an established use for this purpose. They continue by outlining that it houses a variety of pitch maintenance machinery including grow lights used on a day to day basis with a pitch maintenance log attached at Appendix D with Appendix E providing photographs of same with barriers for event days also stored on site with the majority of the property occupied. The site also has an electricity supply to recharge grow lights housed on site.

- 7.2.3. On the day of my visit the grow lights were laid out across the pitch in Croke Park and in operation. They are very large structures with a height of c.2m and extend across the pitch which is c. 90 m wide. These are very bulky structures which are essential for the maintenance of the pitch. When not in use the structures must be stored in a safe, secure location and the subject site given its proximity and accessibility to the stadium provides the current location for same. The existing stadium itself does not have any suitable location for the storage of these very large and bulky grow lights, while they are not in use, given the large area required for their storage. I would consider therefore that the site is not vacant or idle as it has a valid purpose, the storage of essential elements associated with the maintenance of the Stadium. While the purpose is not that for which the site is zoned, it remains a purpose and as such the site cannot be described as vacant or idle.
- 7.2.4. I would also note that the site was being used for the storage of seating associated with the Stadium on the day of my visit. The appeals grounds also reference that as part of the stadium operations that the site is used as a key part of event planning on match days in addition to assembly of Gardai and Artane Band personnel The site is also key, it states to the preparation of the Stadium for concerts such as storing materials from the grounds such as fencing and goal posts with a Draft Works Schedule for stage preparations for the Michael Buble concert in July 2018 attached in Appendix G.
- 7.2.5. They also note that the property has been substantially upgraded since its acquisition to include the installation of electricity, demolition of ruinous structures, acquisition of freehold title, acquisition of additional land from CIE to secure boundary along rail line and construction of a wall along same with costings outlined in Appendix F.

7.2.6. Therefore the key consideration is whether the site is vacant or idle or whether it has a purpose or a use and therefore is not vacant or idle. As I outline above, the site is not vacant or idle as it has a unique storage purpose associated with the adjoining Stadium. I would also note that these are a unique set of circumstances given that this is the only Stadium in the City of this scale. The proximity of the subject site to the Stadium and convenience of same provides safe and secure storage of the grow lights required for the maintenance of the pitch in Croke Park in a convenient and proximate location without the need to load and transport these very large structures to another location in the City.

7.3. **Masterplan/Future Development Proposals**

The appellant states that the site is not under-utilised and refers to plans for the redevelopment of the site as part of an overall masterplan for regeneration of certain properties within the owners portfolio with the owner comprising the property holding company of the GAA whose primary focus is development of amateur sports with no interest in land banking or speculative development. They also state that the owner is at an advanced stage of completing a detailed masterplan with the site forming an integral part of same with the masterplan to be submitted to DCC in the near future and following agreement in principle the necessary planning applications will be submitted for approval with the owner committed to commencing work on site very soon after permission is obtained. They also refer to previous correspondence with DCC which outlined the owner's acceptability to providing reasonable undertakings of same. While the intentions of the appellant in this regard is noted, the spirit of the legislation is to activate sites and therefore I do not consider that an intention to develop would negate the application of the levy.

8.0 **Recommendation**

I recommend that the Board should determine that the site is not vacant or idle and that the entry on the Vacant Sites Register on the 28 July 2017 should be cancelled.

9.0 **Reasons and Considerations**

9.1. Having regard to

- (a) The evidence placed before the Board by the Planning Authority in relation to the condition of the site over the relevant period,

- (b) The absence of any substantive contrary evidence in the Planning Authority's submission and
- (c) The report of the Planning Inspector
- (d) The use of the site for storage of maintenance equipment associated with the maintenance and operation of the pitch and Stadium in Croke Park

the Board is satisfied that the site entry should be cancelled and removed from the Vacant Site Register.

Una Crosse
Senior Planning Inspector

February 2019