



An
Bord
Pleanála

Inspector's Report ABP-302710-18

Type of Appeal	Section 11(4) Appeal against a notice under section 11(1).
Location	6a Hyacinth Street off Ossory Road, Dublin 3.
Planning Authority	Dublin City Council.
Planning Authority VSL Reg. Ref.	VS/0123.
Site Owner	David Lambe.
Date of Site Visit	08 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 6a Hyacinth Street off Ossory Road, Dublin 3 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 subject site is located at the end of Hyacinth Street off Ossory Road, Dublin 3. Hyacinth Street is a narrow cul-de-sac with single storey houses on either side of the road. The entrance to the site is located at the end of this road and defined by a high wall with steel gates. The interior of the site is surfaced with hardcore standing and accommodates a combination of driving school vehicles and motor cars. There are some portacabin offices on the site, but no fixed buildings or structures.
- 2.2. The site is bound to the north west by single storey warehouse/industrial buildings, occupied by health and fitness uses and accessed from Gaelic Street. The site adjoins the back gardens of a terrace of single storey houses along Bessborough Avenue to the northeast. A mixture of warehouse/industrial buildings and yards are located along the south eastern boundary of the site and these are accessed from both Bessborough Avenue to the north and Ossory Road to the south. The Dublin to Maynooth suburban railway line is located close by to the east.
- 2.3. The area is characteristic of backland light industrial units and the commercial use of railway arches that have established over a long period of time at an inner city location.

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 Z1 – To protect, provide and improve residential amenities. 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 and VSL History

4.1. Subject site

Planning authority reference VS-0123 and ABP reference PL29E.VV0003. Notice Confirmed.

5.0 Planning Authority Decision

5.1. Planning Authority Reports

5.1.1. Register of Vacant Sites Report (updated version) - The site is zoned under objective Z1 – To protect, provide and improve residential amenities. The site is classified as residential land and has been vacant or idle for the last 12 months. Notwithstanding the information from the landowner supporting the use of the site as a garage in 1963 and 1972, no permission can be found for the current use on site and the current use may be unauthorised. No enforcement action has taken place. The site is considered vacant or idle as the current use may be unauthorised. Site should be included on the VSR. The report is supported by colour photographs dated 24 July 2018.

5.1.2. Response to Submission Report – A response from the planning authority dated 7 September, referenced the submissions from the appellant, but concluded that the site remains on the register.

5.2. Planning Authority Notice

5.2.1. Dublin City Council advised the site owner that the subject site (Planning Authority site ref. VS-0123) 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 7 September 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 appellant states that they are not the owner of the site.
- The site has been in use since 1932 as a commercial business premises, prior to the coming into force of the Planning Act 1963.
- The site is not vacant.
- No enforcement action has been taken by the Council and no planning permission is required because the site has been in commercial use prior to the Planning Act 1963.

The appeal is supported by a solicitor's letter dated 26 June 2018 addressed to Dublin City Council, that states the following: Mr David Lambe is the occupier/lessee of the site, not the owner. The premises is owned by a Ms. Lillian Moran, now deceased. For the purposes of the 2015 Act, the appellant is not the 'owner', they are neither the registered owner or entitled to receive the rack rate of rent.

The appeal is also supported by photocopied extracts from Thom's Directory that detail the use of the site over the years, a Copy Assignment of the premises to the appellant dated 26 April 2004.

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 31 March 2017.

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 Z1 – To protect, provide and improve residential amenities. 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.

7.1.4. 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.

The appellant has challenged a number of issues such as; the longstanding use of the site, that they are not the owner, the site is not vacant, no planning permission is required for the ongoing use of the site and no enforcement action has been taken to date.

7.2. Ownership

- 7.2.1. The appellant states that they are not the owner of the site and have produced documentary evidence to show that they are the lessee not the landowner. This assertion is reiterated by the appellant's solicitor, whom states the appellant's title to the lands and that their client fails to meet the definition of 'owner' as defined by the Act. From my reading of the legal agreement submitted by the appellant, it would appear that David Lambe is the lessee and not the owner of the lands. This is important because section 3 of the 2015 Act sets out various definitions, in which 'owner' is defined as follows:

(a) in relation to land that is registered land within the meaning of the Registration of Title Act 1964, the registered owner, and

(b) in relation to all other land, a person, other than a mortgagee not in possession, who, whether in his or her own right or as trustee or agent for any other person, is entitled to receive the rack rent of the land or, where the land is not let at a rack rent, would be so entitled if it were so let;

7.2.2. I have not seen any documentation that details to whom the land is registered within the meaning of the Registration of Title Act 1964. It would appear that David Lambe purchased the remainder of a long-term lease from a Gerard Quinn, who in turn obtained a lease from others named in the indenture made on the 29 July 2003. These are complex legal agreements that concern the purchase of a lease from one party to the next. I have some doubt as to the actual owner of the lands in question and it would appear to me that David Lambe is a lessee and not the owner. This is somewhat confirmed by the lack of a Folio reference number and the fact that the lands are detailed as unregistered on the Dublin City VSR. As to Mr Lambe's entitlement to receive the rack rent or to let the lands again, I cannot be sure. It is worth noting that the matter of land ownership did not arise in the original grounds of appeal in relation to PL29E.VV0003 and so these matters are considered as new information. I am not satisfied that the Notices in relation to the section 9 and this section 11 appeal have been issued to the actual owner of the lands in question and so I would advise the Board not to confirm that the site remain on the register.

7.3. Vacant or Idle

7.3.1. A previous appeal on the site was determined by the Board in relation to PL29E.VV0003, the notice was confirmed and the site placed on the register. The Board Direction relied on the failure of the landowner to demonstrate that the current use of the site is authorised. As I have already detailed in section 7.2 above, I have doubts about who is the actual owner of the site. Notwithstanding the lack of ownership information, the question of the use of the site as a yard for storing driving school vehicles still arises. On the day of my site visit and as before on the previous appeal, I can confirm that the yard accommodates the storage of driving school and other vehicles.

7.3.2. The planning authority have again raised the question about the authorised nature of the development and invoked section 6(7) of the 2015 Act and have not had regard to any unauthorised development or unauthorised use. In response, the appellant has provided photocopied extracts from Thom's Directory to show that land at an address at 6a Hyacinth Street was described as Garryowen Garage (1930) and latterly as transport, carriers and haulage (1960 onwards). This new information fills the gap in evidence that was missing from the previous section 9 appeal, in which I had doubts about the authorised nature of the use of the lands. Taken at face value,

the extracts from Thom's Directory appear to show that the address at 6a Hyacinth Street has been in use for a business connected with motor vehicles and logistics since at least 1930. This is relevant because an unauthorised use is defined by the Planning and Development Act 2000 (as amended) as follows:

“unauthorised use” means, in relation to land, use commenced on or after 1 October 1964, being a use which is a material change in use of any structure or other land and being development other than—

(a) exempted development (within the meaning of section 4 of the Act of 1963 or section 4 of this Act), or

(b) development which is the subject of a permission granted under Part IV of the Act of 1963 F21[or under section 34, 37G or 37N of this Act], being a permission which has not been revoked, and which is carried out in compliance with that permission or any condition to which that permission is subject;

7.3.3. I am satisfied that the current use for storing vehicles associated with a driving school is consistent within the use that had commenced before 1 October 1964 and so cannot be described as an unauthorised use. The planning authority's lack of an appetite to initiate enforcement action is telling in this respect. The only rational conclusion to reach is that this premises has been for some time in use as a yard or compound from which to run a business connected with transport generally. Consequently, I am satisfied that the site is not a vacant site for the purposes of the 2015 Act.

7.3.4. The site is suitable for housing and located in an area in which there is a need for housing and therefore in accordance with Section 5(1)(a)(i) and (ii) of the 2015 Act. However, I am satisfied that the subject site was not vacant or idle on the date of my site visit and has been in full use since at least the placement of the site on the register. This view is formed in the context of an ongoing and seemingly long-term use, in this instance the storage of vehicles, that such a use cannot be considered an unauthorised use and regard must be had to such a use.

7.4. Finally, and to conclude, a section 11 appeal requires the Board to determine if a site is no longer a vacant site. Given, the foregoing and specifically the new information submitted by the appellant since the previous section 9 appeal, I am satisfied that

the clarification of the nature of the use of the site has been achieved and that the site is no longer a vacant site within the meaning of the 2015 Act.

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 should not stand on the register in respect of the lands at 6a Hyacinth Street off Ossory Road, Dublin 3 as the site was not a vacant site and that the section 11 notice was not issued to the registered owner. Therefore, the entry on the Vacant Sites Register on the 31 March 2017 shall be removed.

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,
- (d) The failure to issue the registered owner of the site with the section 11 Notice, and
- (e) The ongoing use of the site, being a use that had commenced before the 1 October 1964.

the Board considered that it is appropriate that a notice be issued to the planning authority to remove the site from the Vacant Sites Register.

Stephen Rhys Thomas
Planning Inspector

10 January 2019