



An
Bord
Pleanála

Inspector's Report ABP-304444-19

Type of Appeal	Section 9 Appeal against Section 7(3) Notice
Location	Former factory site, Jamestown Road, Finglas Business Centre, Jamestown Road, Finglas, Dublin 11
Planning Authority	Dublin City Council
Planning Authority VSL Reg. Ref.	VS-0542
Site Owner	W.I Limited
Planning Authority Decision	Place on Register
Date of Site Visit	9th September 2019
Inspector	Erika Casey

1.0 Introduction

- 1.1. This appeal refers to a Section 7(3) Notice issued by Dublin City Council, stating their intention to enter a site referred to as former factory site, Finglas Business Centre, Jamestown Road, Finglas, Dublin 11 onto the Vacant Sites Register (VSR) in accordance with the provisions of Section 6(2) of the Urban Regeneration and Housing Act 2015. The Notice states that the Planning Authority is of the opinion that the site is a vacant site within the meaning set out in Sections 5(1)(b) of the URH Act 2015.
- 1.2. The appeal site registered under VSL reference VS-0542, has one registered owner: W.I Limited.

2.0 Site Location and Description

- 2.1 The subject site is located on the Jamestown Road adjoining the Finglas Business Centre estate. The site was formerly occupied by a factory building that has now been demolished. It is currently covered in concrete hard standing, gravel and vegetation. There is a high concrete boundary wall along the front boundary to the Jamestown Road. Palisade fencing is located along the boundary to the south, adjoining the principal vehicular and pedestrian access to the Finglas Business Centre. To the west of the site, are other industrial and commercial buildings associated with the Finglas Business Centre. Further industrial units are located to the north and south. Extensive low density suburban housing is located to the east, on the opposite side of the Jamestown Road.

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)(b) of the Act. The Notice is dated 16th April 2019.
- 3.1.2. Prior to this, a Notice of Proposed Entry was issued to the landowner on the 14th of

February 2019. This was accompanied by a Planning Report and map outlining the extent of the site to which the Notice relates.

3.1.3. Section 5(1)(b) of the Act stated that a site is a vacant site if, 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 2000) in the area in which the site is situated or has adverse effects on the character of the area.

3.1.4 With regard to adverse effects, Section 6(6) of the Act sets out a number of criteria including:

- (a) land or structure in the area were, or are, in a ruinous or neglected condition;
- (b) antisocial behaviour was or is taking place in the area;
- (c) there has been a reduction in the number of habitable houses, or the number of people living in the area;
- (d) and whether or not these matters were affected by the existence of such vacant or idle land.

3.1.5 The Act defines regeneration land at Section 3 as follows:

“regeneration land means land identified by a Planning Authority in its development plan or local area plan, after the coming onto operation of section 28, in accordance with section 10(2)(h) of the Act of 2000 with the objective of development and renewal of areas in need of regeneration, and includes any structure on such land.”

3.2. Development Plan Policy

3.2.1 The Dublin City Development Plan 2016-2022 is the operative development plan. The subject site is zoned “Z6 – *To provide for the creation and protection of enterprise and facilitate opportunities for employment creation*”.

3.2.2 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.

- 3.3.3 **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.
- 3.3.4 **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.
- 3.3.5 It is recognised in Section 6.5.4 of the plan that the speedy re-development of extensive vacant/under-utilised sites, especially in the city centre zoned area, is critical to sustainable development. In this regard, Policy CEE15 seeks *“to promote and facilitate the transformation of regeneration areas, especially inner city areas, as a key policy priority and opportunity to improve the attractiveness and competitiveness of the city, including by promoting high-quality private and public investment and by seeking European Union funding to support regeneration initiatives, for the benefit of residents, employees and visitors.”*
- 3.3.6 **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.

3.3.7 **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.

3.3.8 It is a policy of the Council (**Policy QH5**) *“to promote residential development addressing any shortfall in housing provision through active land management and a coordinated planned approach to developing appropriately zoned lands at key locations including regeneration areas, vacant sites and under-utilised sites.”*

4.0 Planning History

4.1 No recent planning history. There is an historic permission dating back to 1996 where permission was granted for the construction of 52 light industrial/warehouse units with integral office space and associated site development works – application reference 2958/96. Amendment permissions granted under application references 2709/04, 3918/03, 0245/01, 0164/00, 2222/98 and 2958/97.

5.0 Planning Authority Decision

5.1. Planning Authority Reports

5.1.1 A Vacant Site Report) was prepared for the site outlining the dates of the visits to the site, description of the area, zoning, planning history and the type of site for the purposes of the Act which in this case is Regeneration. The following key points are noted:

- The site has an area of 1.5706 ha and is considered Regeneration Land.
- The site is serviced by public infrastructure.
- No evidence of anti-social behaviour on the site.
- There is nothing affecting the physical condition of the land.
- Site visits undertaken on the 06/10/2016 and 13/04/2018. The majority of the site is vacant or idle for the last 12 months.
- At the first site visit, it was noted that the lands were clearly vacant and idle. The site itself was in poor repair, unkempt and it was considered likely that it detracted from the visual amenity of adjacent residential properties along the Jamestown Road.
- At the second site visit, it was noted that the site was in a similar condition to that previously witnessed. No additional construction or development had taken place. The report concludes that the lands are clearly vacant and idle and thus the site should be placed on the register.

5.1.2 Further correspondence from the PA dated the 4th of April 2019 noted that the current owners are in the process of selling the site. However, as the site meets the criteria for entry onto the Vacant Sites Register as outlined in the Act, it will be published on the register.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1 An appeal was received from Lisney on behalf of the land owner on the 13th of May 2019 which can be summarised as follows:

- Site was placed on the market in Q4 2018. A marketing campaign was performed in relation to its disposal and the appellant has incurred significant expense in this regard including a feasibility study for a potential residential scheme.
- Sale has been agreed and the legal process is now in progress.
- The placement of the site on the Vacant Site register may have a negative

effect on the current position and may prolong unnecessarily the disposal process.

- Request site is not placed on the register as a sale is soon to be concluded hence bringing forward the site for development.

6.2. Planning Authority Response

6.2.1 A response from Dublin City Council was received on the 23rd of May 2019. This states that while the sale of the site and its development in the future is welcomed, no planning permission has been sought for the site and no construction works have taken place on the site since the most recent inspection in April 2018. As such the site in the opinion of the Planning Authority still meets the criteria for inclusion on the Vacant Sites Register.

6.3 Further Response

6.3.1 The response from the Planning Authority was circulated to the appellant in accordance with section 131 of the Planning and development Act 2000. A further submission was made by Lisney on behalf of the Landowner on the 8th of July 2019. This reiterates that the site is currently sale agreed and in the legal process and in this context, requests that it is not placed onto the register.

7.0 Assessment

7.1. Introduction

7.1.1. This Notice has been issued under the provisions of Section 5(1)(b) of the Act which relates to 'regeneration lands'.

7.1.2. Section 5(1)(b) of the Act states that a site is a vacant site if, in the case of a site consisting of 'regeneration' land:-

- (iii) The site, or the majority of the site, is vacant or idle, and
- (iv) 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 2000) in the area in which the site is situated or has adverse effects on the character of the area.

- 7.1.3. I will consider each of these factors below. I will then address the appellant's main contention that the site should not be placed on the register due to the fact that it is currently in the process of being sold.

The site, or the majority of the site, is vacant or idle

- 7.1.4 I note that two site visits were undertaken by the Planning Authority in 2016 and 2018. On both occasions, the site was evidently vacant. I also observed during my site visit that no construction activity has commenced on the site and I am satisfied that the majority of the site is vacant and idle. The appellant does not contest that the site is vacant.

The site being vacant or idle has adverse effects on existing amenities

- 7.1.5 In determining whether a site 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 2000) in the area in which the site is situated or has adverse effects on the character of the area, a number of specific criteria are set out section 6(6) of the Act. These are considered further below.

(a) land or structure in the area were, or are, in a ruinous or neglected condition

- 7.1.6 The subject site formerly was occupied by an industrial building, which was demolished. The site is currently vacant and covered in concrete hardstanding. The site is clearly visible from the public realm at the entrance to the Finglas Business Centre and has a substantial frontage along the Jamestown Road. It has a neglected and unkempt appearance with overgrown vegetation. There was evidence of litter on the site. The site lies immediately proximate to an established residential community to the east. I consider that the site significantly detracts from the visual and residential amenities of these dwellings. I am satisfied that the site comprises lands that are in a neglected condition.
- 7.1.7 In conclusion, I am satisfied that the neglected and derelict condition of these vacant lands has an adverse effect on existing amenities and reduces the amenity provided by existing public infrastructure and facilities (within the meaning of Section 48 of the

Act 2000) in the area in which the site is situated, particularly due to the strategic location of the lands within the built up urban area and its proximity to other physical and social infrastructure. The site and has an adverse effect on the character of the area.

Antisocial behaviour was or is taking place in the area

7.1.8 At the time of the site visit, there was no evidence of antisocial behaviour on the site.

There has been a reduction in the number of habitable houses, or the number of people living in the area

7.1.9 There is no evidence to suggest that as a result of the vacant site that there has been a reduction in the number of habitable houses, or the number of people living in the area.

7.1.10 In conclusion, I consider that 1 of the tests in Section 6(6) is met and that site has an adverse effect on existing amenities and thus can be categorised as a vacant site as defined by Section 5(1)(b).

Other Issues

7.1.11 The appellants main contention and ground of appeal is that the site has recently been sold and the legalities of the sale are being finalised. It is stated that the placement of the site on the register will have a negative impact on the disposal process.

7.1.12 I note that no evidence has been submitted by the appellant regarding a change in the ownership of the site and it is evident from the documentation, that the ownership change has not been finalised. . At the time of the site visit, the site was actively being marketed for sale. In any event, change of ownership has no impact upon the assessment of whether a site should be included on the VSR or not. Section 17 of the 2015 Act, sets out procedures in relation to the charging of the levy and change of ownership is relevant in that instance. Section 17 (1) states that where in any year there is a change in ownership of a vacant site, the amount of vacant site levy to be charged in respect of that site for that year, and for the preceding year, shall be zero. However, irrespective of any change of ownership, the burden of demonstrating whether a site is vacant or not lies with the owner, as set out in Section 9(2) of the 2015 Act. In this instance, the site remains vacant, no planning permission has been

sought and no development has commenced. I am satisfied that the site meets the criteria for being determined as a vacant site and its placement on the register in this regard should be confirmed.

8.0 Recommendation

8.1. I recommend that in accordance with Section 9(5) of the Urban Regeneration and Housing Act 2015 (as amended), the Board should confirm the entry on the register of site (VS-0542) as it was a vacant site for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 16th of April 2019 shall be deemed to take effect from that date.

9.0 Reasons and Considerations

9.1 Having regard to:

- (a) The information placed before 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 Senior Planning Inspector,
- (d) The provisions of the Dublin City Development Plan 2016-2022;
- (e) That the neglected and derelict condition of these vacant lands which is visible from the public realm has an adverse effect on existing amenities; reduces the amenity provided by existing public infrastructure and facilities (within the meaning of Section 48 of the Act 2000) in the area in which the site is situated, particularly due to the strategic location of the lands in the built up urban area and in proximity other physical and social infrastructure; has an adverse affect on the character of the area and and that insufficient reason is put forward to cancel entry on the Vacant Sites Register.

The Board is satisfied that the site was a vacant site for the relevant period.

Erika Casey
Senior Planning Inspector
10th September 2019