



An  
Bord  
Pleanála

## Inspector's Report ABP-313456-22

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<b>Type of Appeal</b>	Section 9 Appeal against section 7(3) Notice.
<b>Location</b>	Former Tayto Site, Greencastle Road, Dublin 17.
<b>Planning Authority</b>	Dublin City Council.
<b>Planning Authority VSL Reg. Ref.</b>	VS-0621.
<b>Site Owner</b>	T Stafford and Sons, Unlimited Company.
<b>Planning Authority Decision</b>	Entry on to Register.
<b>Date of Site Visit</b>	10 November 2022.
<b>Inspector</b>	Stephen Rhys Thomas.

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## 1.0 Introduction

- 1.1. This appeal refers to a section 7(3) notice issued by Dublin City Council, stating their intention to enter the Former Tayto Site, at Greencastle Road, Dublin 17 on to the Vacant Sites Register (VSR) in accordance with the provisions of section 6(2) of the Urban Regeneration and Housing Act 2015.

## 2.0 Site Location and Description

- 2.1. The subject site is located in the southern part of the Malahide Road Industrial Estate, Coolock, Dublin 17, approx. 7km northeast of Dublin City Centre and approx. 3.5km from the M1 motorway. The site comprises a factory complex and associated offices. Access to the appeal site is from the Greencastle Road. There is an overgrown landscaped area to the front of the site along the R107 (Malahide Road), visible through a steel railing fence. The boundary along Greencastle Road for the most part is set up with construction hording and there is ongoing construction work being carried out on site.

## 3.0 Statutory Context

### 3.1. Urban Regeneration and Housing Act 2015 (as amended).

- 3.1.1. The Notice issued under Section 7(3) of the Act states that the planning authority 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 5 April 2022 and is accompanied by a map outlining the extent of the site to which the Notice relates.
- 3.1.2. The relevant sections of the 2015 Act are as follows:

*5. (1) In this Part, a site is a vacant site if—*

*(b) 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.*

3.1.3. And, section 6 as follows:

*(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.*

## 4.0 Development Plan Policy

4.1. The **Dublin City Development Plan 2016-2022** is the operative development plan.

The site is located on lands that are subject to zoning objective Z6,

Employment/Enterprise, the objective of which is 'to provide for the creation and protection of enterprise and facilitate opportunities for employment creation.'

4.2. 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.

4.3. 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.

- 4.4. Section 14.9 of the Development Plan 2016-2022 states that the VSL will apply to lands zoned Z1, Z2, Z3, Z4, Z5, Z6, Z7, Z8, Z10, Z12 and Z14.
- 4.5. 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.
- 4.6. 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.
- 4.7. **Dublin City Development Plan 2022-2028** - the Elected Members will make the Dublin City Development Plan 2022-2028 with or without amendment, at the end of October 2022, this date has not been confirmed. Irrespective, the notification to enter the site on to the register to the owner was issued during the 2022 Development

Plan and all issues that relate to the appeal are only relevant to the operative plan at the time.

- 4.8. **Residential Zoned Land Tax** - Draft RZLT maps were published by local authorities on 1 November 2022. Submissions can be made by the public on the Dublin City Council RZLT draft map by 1st January 2023.

## 5.0 **Planning History**

### 5.1. **Subject site:**

PA ref **3462/19** - The development will consist of alterations to a previously approved development Reg. Ref. 4194/15 including: (i) change of use of the northern warehouse (881.2 sqm) from a light industrial use to motor sales and service outlet and associated internal alterations to provide for a new workshop, staff facilities, customer lounge, reception and ancillary offices at ground floor; (ii) provision of 9 no. parking spaces for customers and staff and 35 no. parking spaces for displaying vehicles associated with the motor sales and service outlet; (iii) internal alterations to layout at ground floor to include: removal of previously approved chapels 3 & 4 and replacement with relocated florist; provision of coffee shop in location of previously approved florist; omission of previously approved store room in north-west of the building; retention of partition walls previously approved for demolition to the south-east of the garage; and reconfiguration of remaining internal rooms previously approved facilitate new uses on site and improve the functionality of previously approved development; (iv) internal alterations to layout at first floor to include: provision of plant room (66 sq.m); mezzanine over repositioned florist (45 sq.m); additional storage rooms at first floor level; and reconfiguration of remaining internal rooms previously approved to facilitate new uses on site and improve the functionality of previously approved development; (v) external alterations comprising the provision of stairwell at north western corner of building providing access to first floor office; the removal of existing loading ramp on the south-west elevation of factory and open steel frame structure on the north western elevation; the removal of existing loading bays and opes on north west and north east elevations; the installation of new fenestration and opes on all elevations to car sales outlet and coffee shop; closing of external doors and loading bays on north west and north east

elevation; and provision of new fenestration and opes throughout; (vi) provision of new fascia level signage over coffee shop and motor sales outlet on south-west elevation; (vii) new landscaping at south-east corner of the site; and (viii) all ancillary works necessary to facilitate the development. October 2019.

PA ref **4194/15** – Permission for (i) the continuation of the light industrial use of the site comprising a central operating depot and head office facility for Stafford Funeral Homes (2,031sq.m); and subdivision of the factory building to create a separate light industrial unit (884sq.m); (ii) internal alterations and part change of use from light industrial to funeral home (1,852sq.m) consisting of ancillary offices, stores, 4no. chapels, show room, toilets, 5no. resting rooms and florist; (iii) demolition of an extension (13sq.m) on the north east elevation of the factory building; (iv) infill extensions at ground and first floor levels (336.5sq.m in total); (v) external alterations consisting of the repair and refurbishment of all elevations of the building, including significant refurbishment of the elevations fronting Greencastle Road and Malahide Road, comprising the installation of new windows across the ground and first floor levels, existing concrete facade to be painted render, glazed feature entrance to florist and level access ramps with railings; (v) repair of the existing flat roof; (vi) access to be maintained from 2no. existing vehicular entrance points on Greencastle Road; (vii) 38no. existing on-site car parking spaces to be retained for shared use between the funeral home and light industrial uses; (viii) construction of internal footpath from car park to unit (to be subdivided); (ix) improvement works to existing landscaping and boundary treatments; (x) fascia level signage to front/ southwestern elevation and display of signage on existing pole sign on south east corner of the site; (xi) SuDS drainage and all associated site works. March 2016.

PA ref **4194/15/X1**, extension of permission re the above. May 2022.

## 5.2. **Adjacent site:**

PA ref **2921/18** and ABP ref PL29N.**302155**. Permission refused to demolish all existing structures on site, and the provision of a mixed use development and all associated site works. January 2019.

## 6.0 **Planning Authority Decision**

### 6.1. **Register of Vacant Sites Report:**

6.1.1. First report – Site inspection took place on the 28 September 2021, update report date 21 October 2021. The site comprises the former Tayto factory, in poor condition and has been vacant for the past 12 months. Vegetation is overgrown and amounts of builders waste is present on site. Car parking on site but no permission sought for this use. An update report confirms original findings. Site should be included on the register. Photographs dated 2016 and September 2021. Aerial photography 2013 and google maps image 2016.

## 6.2. Planning Authority Notices

6.2.1. A section 7(3) Notice issued on the 5 April 2022 referencing sections 5(1)(b) and 6(6) of the Act, advising the owner that their site had been placed on the register, accompanied by a site map. The Notice was sent to T Stafford and Sons, Unlimited Company.

6.2.2. A section 7(1) Notice issued on the 20 January 2022, advising the owner that their site had been identified as a vacant site and invited submissions, also accompanied by a site map. The notice references sections 5(1)(b) and 5(2) of the 2015 Act.

## 7.0 The Appeal

### 7.1. Grounds of Appeal

7.1.1. The landowner has submitted an appeal to the Board, against the decision of Dublin City Council to enter the subject site on the Register. The grounds of the appeal can be summarised as follows:

- The site is an active construction site since 2019. Permissions 4194/15 and 3462/19 refer and commencement notice CN0049190DC also refers. Covid restrictions have prolonged the works. Over €620,000 has been spent and a building contractor has been engaged since 2019. The ordinary meaning of vacant or idle should be referred to as in the Navratil v ABP case.
- The VSR will soon be discontinued, and the new Zoned Land Tax will only take account of residentially zoned land. The draft plan retains the Z6 zoning so the site will not be included in any such tax.



- The initial site inspection date is not recorded and so the twelve month period has not been accounted for. In a previous case the twelve month period was questioned, 302873 refers.
- In terms of adverse effects, the site is not neglected or ruinous it is an active construction site, there is no evidence of antisocial behaviour or a reduction in housing in the area.
- In terms of precedent, it is noted that significant works were taken into account in a vacant site appeal in Cork, ABP reference 300838 refers.

The grounds of appeal are accompanied by; the notice, invoices, section 48 contribution payment, builders declaration of works being carried out, commencement notice and legal opinion.

## **7.2. Planning Authority Response**

- 7.2.1. The lands are not an active construction site, photographs of 13 May 2022 demonstrate this.
- 7.2.2. Covid restrictions cannot be used as an excuse for delays, ABP reference 308823 refers,
- 7.2.3. Site visits are listed and the twelve month period can be accounted for.
- 7.2.4. The site is zoned for the purposes of regeneration sites in the current development plan, this is the only relevant plan for the consideration of inclusion on the register.
- 7.2.5. Very minor works have been completed and the site still has an unkept appearance.
- 7.2.6. Photographs of the 12 May 2022 are submitted.

## **7.3. Further Response**

The appellant reiterates many of the points set out in the initial grounds of appeal, in addition, they outline the following:

- The case officer report of planning application 4194/15/X1 notes that significant works have taken place and that permission should be extended. Revisions to the PDA 2000 with reference to the extension of duration of permission are set out.

- The dates of site visits are noted with reference to the twelve month period, the Board are asked to decide.
- Works are progressing slowly but permission does not run out until 2024.
- Internal and external photographs of the development have been submitted to illustrate the degree or works already complete.

## 8.0 **Assessment**

### 8.1. **Introduction**

- 8.1.1. An appeal under section 9 of the Act, requires that the burden of showing that the site was not a vacant site for the 12 months preceding the date of entry on the Register is on the owner of the site. Section 9(3) of the Act states that the Board shall determine whether the site was a vacant site for the duration of the 12 months concerned or was no longer a vacant site on the date on which the site was entered on the register. The subject site was entered onto the Dublin City Council VSR on the 5 April 2022.
- 8.1.2. The Section 7(1) Notice was issued under the provisions of Section 7(1) of the Act, to which the owner responded, and the planning authority took into account. The Section 7(3) Notice was issued under the provisions of Section 5(1)(b) of the Act which relates to regeneration lands. The assessment undertaken by the Planning Authority to inform the placement of the site on the Register, which I outline in section 6.1 above, refers to the tests included for regeneration lands under section 5(1)(b) and by reference to Section 6(6) of the Act as is required for lands zoned for regeneration purposes. The lands are subject to zoning objective Z6, Employment/Enterprise, the objective of which is 'to provide for the creation and protection of enterprise and facilitate opportunities for employment creation. Section 14.9 of the Development Plan 2016-2022 states that the VSL will apply to lands zoned Z1, Z2, Z3, Z4, Z5, Z6, Z7, Z8, Z10, Z12 and Z14. The site can therefore be considered as regeneration for the purposes of the levy.
- 8.1.3. The main concerns of the appellant are that the site though not in use cannot be classed as a vacant site as defined by the 2015 Act. This is because the buildings are not in a ruinous or neglected condition, no antisocial behaviour is taking place and there has not been a reduction in habitable buildings. In addition, the appellant

maintains that the site does not adversely affect the character of the area, or the amenities provided therein. This is all because the lands have been an active construction site since 2019 in the pursuit of completing permitted development under PA ref 4194/15 as extended and PA ref 3462/19. To all of this the planning authority confirm their contention that the site is a vacant site within the terms of the 2015 Act.

## 8.2. **Site context**

8.2.1. The site comprises the former Tayto factory, now under refurbishment by the owners T Stafford and Sons. According to the appellant, refurbishment works have been ongoing at the site since 2019, invoices, a sworn affidavit from the building contractor and photographs of works carried out support this claim. The planning authority's photographic record of the site details exterior details but does not show internal renovations to the factory buildings which according to the owner's photographs appear extensive. From my own observations of the site, it is evident that construction works are ongoing.

## 8.3. **Vacant or Idle?**

8.3.1. Section 5(1)(b) refers to lands considered to come within the meaning included for Regeneration Land and the tests for such sites are as follows:

*(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.*

8.3.2. The site must meet both tests and I will address each in turn.

8.3.3. Vacant or Idle – The appellant does not advance an actual use for the site and the planning authority note that the factory has been vacant for some time. The planning authority state that lack of a use is just one of the reasons for inclusion on the register, its neglected appearance has and is having an effect on the character of the area. The surveys conducted by the planning authority record the poor condition of buildings on the site over the years. On the day of my visit, I observed that the

factory buildings were undergoing construction/refurbishment works and contractors were on site.

- 8.3.4. The 2015 Act does not list the types of uses that can be considered for regeneration lands, indeed the Act simply refers to lands that are vacant or idle. The burden of proving that the lands are not vacant or idle falls to the owner. The appellant has not advanced a use for the site but states that the ongoing action of construction works that are the subject of a live planning permission should be considered to constitute a singular use for the lands and so they are not idle.
- 8.3.5. The appellant's case that the site is not idle because of the ongoing construction/refurbishment works is supported with reference to a precedent case whereby site development works such as roads, footpaths and several homes were completed is of some merit, ABP-300838-18 refers. In addition, the appellant points to the words stated in the Navratil judgment, that the natural meaning of vacant and idle should be used. In this respect the appellant states that the lands have not been idle because construction works have been ongoing since 2019.
- 8.3.6. It is clear that works on site have taken a long time to complete and are still ongoing. It is also evident that significant works had taken place on site in order for the original permission to be extended until 2024, the reproduction of the case officer's assessment in relation to PA ref 4194/15/X1 is inciteful. Finally, the appellant has produced a lot of material, including photographs, invoices and the word of a building contractor that works have been carried out on site since at least 2019 and only interrupted by Covid restrictions.
- 8.3.7. I am aware that the Planning and Development Act 2000 (as amended) states that use cannot mean the use of the land by the carrying out of any works thereon. In this instance development has and continues to be carried out on the buildings on site, but clearly no use can occur until all is complete. However, the Urban Regeneration and Housing Act 2015 introduces an additional concept and that is whether a site is vacant or idle and I am satisfied that in this instance the lands have not been idle insofar as refurbishments the subject of a live planning permission have been ongoing. The meaning of the words vacant or idle have been elaborated upon in the Navratil judgment mentioned by the appellant, and it is accepted that in relation to residential and regeneration lands, vacant or idle should be ascribed their literal

meaning. Consequently, and in accordance with the purpose of the 2015 Act to prevent land in areas in need of housing and lands in need of renewal, from lying idle or remaining vacant. The site has been activated by a planning permission, works are ongoing and renewal and rejuvenation will be the result.

8.3.8. It is reasonable to conclude that the appellant has until the expiration of the planning permission in 2024 to complete these works and then the buildings can be put to use. I am satisfied that for the relevant period the site was not idle, and should not be considered for placement on the register.

8.3.9. Adverse Effects – Should the Board decide that the site was vacant or idle for the relevant period the appellant has set out the reasons why the site being vacant or idle does not have adverse effects. The appellant states that as active construction site, the area is well maintained and monitored. The site does not adversely affect the character of the area or impact upon public amenities. No antisocial behaviour occurs on the site and there is no evidence that the number of habitable houses has been reduced. The appellant claims that none of Section 5(1)(b)(ii) as expanded by Section 6(6) are met. The planning authority disagree and specifically mention the neglected nature of the site that adversely impacts the character of the area.

8.3.10. In order to be considered a vacant site under Section 5(1)(b) a site must also meet the test outlined in Section 5(1)(b)(ii), such as 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. This test is considered by reference to Section 6(6) of the Act 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.*

- 8.3.11. Therefore, these are the tests which determine whether or not the site being vacant or idle has adverse affects on existing amenities or reduces the amenity provided by existing public infrastructure and facilities. The planning authority outlines in detail the condition of the site and examines the tests included in Section 6(6).
- 8.3.12. Firstly, the planning authority note the condition of the site and its neglected appearance and the impact it is having on the amenities and character of the area. I observed that the site had all the appearance of an active construction site, albeit at a low scale of activity. The appellant has produced a variety of photographs to show the pace of works on site over the relevant period. In my view the site is not exactly attractive, however, it is not remarkably different to the condition of other industrial buildings in the wider area. Appearances aside, the subject site has been undergoing renovation works since 2019 (and during the relevant period), the pace of works have been slow but ongoing. Hoarding has been erected on site and is maintained, there are overgrown spoil heaps on site and other construction paraphernalia is observable from outside the site. In my opinion the appearance of the lands is not particularly different to other properties in the vicinity and so there is no adverse effects on the amenity or character of the area.
- 8.3.13. The second matter 6(6)(b) refers to anti-social behaviour which was or is taking place in the area. The planning authority do not highlight this as an issue and the appellant maintains that because the lands are under activity construction no unauthorised entry and hence antisocial behaviour takes place. I agree, and consider that the site would not meet this test.
- 8.3.14. In terms of a reduction in the number of habitable houses, or the number of people living, in the area. I find that there is no hard evidence either way to suggest that there has been a reduction in the number of habitable houses, or the number of people living, in the area. In conclusion, I consider that none of the tests in Section 6(6) are met and that the site has no adverse effects on the character of the area, no antisocial behaviour was or is taking place and the number of habitable houses has not been reduced, the site cannot be categorised as a vacant site as defined by Section 5(1)(b)(ii).

#### 8.4. **Other Matters**

- 8.4.1. Zoned Land Tax - The appellant notes that the VSR will soon be discontinued and the new Zone Land Tax will only take account of residentially zoned land. In addition the draft Dublin City Development Plan retains the Z6 zoning so the site will not be included in any such tax. This may be the case but is not a reason not to consider the inclusion of the site in the first instance under the operative plan at the time.
- 8.4.2. Relevant Period – the appellant queries whether site visits were carried out to properly assess the vacant or idle nature of the site during the relevant twelve month period. The planning authority have responded to this query and have outlined the dates that the site was inspected, and these dates accord with the requirements of the 2015 Act. The inspection dates are as follows: 06/12/16, 28/09/21, 21/10/21 and 12/05/22. I am satisfied that the twelve month period for consideration by the planning authority has been adequately accounted for.

## 9.0 Recommendation

- 9.1. I recommend that in accordance with section 9(5) of the Urban Regeneration and Housing Act 2015 (as amended), the Board should cancel the site (VS-0621), that was not a vacant site for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 5 April 2022 shall be removed.

## 10.0 Reasons and Considerations

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 Inspector;
- (d) The site, or the majority of the site, was and is not idle due to ongoing construction and refurbishment works and that the moderately maintained condition of the site in the context of the surrounding area does not have adverse effects on the character of the area,

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

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Stephen Rhys Thomas  
Senior Planning Inspector

25 November 2022