



An
Bord
Pleanála

Inspector's Report ABP-313459-22

Type of Appeal	Section 9 Appeal against section 7(3) notice.
Location	Former Long Mile Works, Long Mile Road, Dublin 12.
Planning Authority	Dublin City Council.
Planning Authority VSL Reg. Ref.	VS-0864.
Site Owner	General Motors IT Services (Ireland) Limited.
Planning Authority Decision	Entry on to Register.
Date of Site Visit	10 November 2022.
Inspector	Stephen Rhys Thomas.

Contents

1.0 Introduction	3
2.0 Site Location and Description	3
3.0 Statutory Context	3
4.0 Development Plan Policy	5
5.0 Planning History	6
6.0 Planning Authority Decision	7
7.0 The Appeal	7
7.2. Planning Authority Response	8
7.3. Further Response	9
8.0 Assessment	10
9.0 Recommendation	13
10.0 Reasons and Considerations	13

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 Long Mile Works, Long Mile Road, Dublin 12 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 at the former Long Mile Works between the Long Mile Business Park and Drimnagh Castle Secondary School. The lands have frontage to the Long Mile Road in the south western city suburb of Walkinstown. The former Long Mile Works is a factory building set on its own grounds. The site frontage is well landscaped and the factory building front façade is moderately well maintained. The site also comprises yard space around the remainder of the building upon which car parking takes place. The factory building is in poor condition with the roof missing from the majority of the overall structure. The area is characterised by commercial, educational and residential buildings all along the Long Mile Road.

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)(a) 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:

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

(a) 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 the provision of housing, and

(iii) 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.]

3.1.3. And, section 6(4) and (5) as follows:

(4) A planning authority, or the Board on appeal, shall determine whether or not there was a need for housing in an area within the planning authority's functional area for the purposes of this Part by reference to—

(a) the housing strategy and the core strategy of the planning authority,

(b) house prices and the cost of renting houses in the area,

(c) the number of households qualified for social housing support in accordance with section 20 of the Housing (Miscellaneous Provisions) Act 2009 that have specified the area as an area of choice for the receipt of such support and any changes to that number since the adoption of the planning authority's development plan, and

(d) whether the number of habitable houses available for purchase or rent was less than 5 per cent of the total number of houses in the area.

(5) A planning authority, or the Board on appeal, shall determine whether or not a site was suitable for the provision of housing for the purposes of this Part by reference to—

(a) the core strategy,

(b) whether the site was served by the public infrastructure and facilities (within the meaning of section 48 of the Act of 2000) necessary to enable housing to be provided and serviced, and

(c) whether there was any thing affecting the physical condition of the land comprising the site which might affect the provision of housing.

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 Z14 with a stated objective 'to seek the social, economic and physical development and/or rejuvenation of an area with mixed use, of which residential and 'Z6' would be the predominant uses'. The appeal site is part of a Strategic Development and Regeneration Area, SDRA 5 Naas Road Lands and also with the area of the Naas Road Lands LAP 2013.
- 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 **4162/00** - The change of use of an existing rear warehouse building (Gross Floor Area 3,092 sq metres approximately) from industrial to science and technology - based industry use (internet solutions centre). February 2001

5.2. Adjacent site:

Other planning applications relate to changes and amendments to the warehouse structure north of the subject site.

6.0 Planning Authority Decision

6.1. Register of Vacant Sites Report:

- 6.1.1. Planning Report - Site inspection took place on the 16 August 2021. Site considered to be residential. Building on site in poor condition and not in use. Site first visited 21 September 2016. The site is in an area in need of housing, the site is suitable for housing and the site is vacant/idle.

6.2. Planning Authority Notices

- 6.2.1. A section 7(3) Notice issued on the 5 April 2022 referencing sections 5(1)(a) and 6(2) of the Act, advising the owner that their site had been placed on the register, accompanied by a site map.
- 6.2.2. A section 7(1) Notice issued on the 18 February 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)(a) 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 should be considered as commercially zoned and not residential. The LAP refines the land use zoning for the area and assigns a commercial use to the subject site and surrounding area. SDRA 5 excludes the lands from residential uses. The site cannot therefore be placed on the register under section 5(1)(a) of the 2015 Act.
 - There is not a need for housing in the area, the planning authority have failed to detail all the criteria set out in section 6(4) of the 2015.

- The site is unsuitable for housing, the development plan and LAP conflict in their advice on residential units fronting onto heavily trafficked routes. Not all parts of the SDRA are suitable for housing and the site is one such location where housing is not suitable. There are infrastructural constraints that mean the delivery of housing would not be possible, ABP-300784 is referenced as a similar example. Residential uses would not be compatible with the existing facility to the north, that was developed in the recent past with the intention of utilising the entire site. A planning application is to follow for the development of the entire site.
- The overall site is security monitored and maintained to a high standard, it does not adversely affect the area, no antisocial behaviour occurs. The site is well maintained but is in passive use (daily car parking), ABP 300531 refers.
- It is not clear if the twelve month period had elapsed between site visits, ABP 302934 and 303559 both refer.
- Section 7(1) Notice did not comply with the 2015 Act with reference to setting out the reasons for placing the site on the register.

The grounds of appeal are accompanied by; the notice, previous submission and planning permission documents.

7.2. Planning Authority Response

- 7.2.1. Corrective action was taken with relation to the section 7(1) notice, the planning report clearly sets out the rationale for inclusion on the register in relation to residential lands.
- 7.2.2. The relevant plan for the implementation of the VSL is the Dublin City Development Plan 2016-2022, Z14 and SDR areas are included for the purposes of residential lands.
- 7.2.3. With up to 47,000 residential units required for the city area by 2028, it is considered that there is a housing need. Note the updated Valuer's report dated 14 April 2022.
- 7.2.4. The lands are suitable for housing, there are no infrastructural impediments. Good design and a shared access could bring this site forward for commercial ground floor and residential across other floors.

7.2.5. The use of the site for storing building materials associated with the adjacent development has not been permitted, could be unauthorised and thus disregarded. Despite car parking on the site, the majority of the site (factory building) is vacant/idle.

7.2.6. Dates for site visits are provided and show compliance with the 2015 Act.

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 site is not a vacant site, the LAP is the relevant plan. The Development Plan and zoning objective 14.9 relates to lands zoned or identified as residential in an SDRA, rather than the entire SDRA. The site is not identified as residential land. There are no changes to this status in the Draft Plan.
- The need for housing set out by the planning authority post dates the notice and so has no relevance.
- There is no detail about the September 2016 site visit and there are cross references to amenity and other factors to do with regeneration lands in the 2021 report. Precedent cases of a lack of twelve month scrutiny include ABP-302934-18 and ABP-303559-19.

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. I note that the initial section 7(1) Notice referred to section 5(1)(b) regeneration lands and that this was according to the planning authority corrected by the issue of a second notice that referred to section 5(1)(a) residential lands. The section 7(3) Notice was issued under the provisions of Section 5(1)(a) of the Act which relates to residential 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 residential lands under section 5(1)(a) of the Act as is required for lands zoned for residential purposes. The lands are subject to zoning objective Z14, To seek the social, economic and physical development and/or rejuvenation of an area with mixed use, of which residential and 'Z6' would be the predominant uses. 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. Given that lands zoned Z14 fall under part 1 of section 14.9 of the Development Plan, the site can therefore be considered as residential for the purposes of the levy.
- 8.1.3. The main concerns of the appellant are that the site cannot be considered as a vacant site because it is not zoned for residential purposes in the LAP for the area and is currently in use as a car park. The appellant maintains that there is no need for housing in the area and that the site is unsuitable for housing along a busy road where there are infrastructural constraints. The planning authority disagree and state that land zoned Z14 (SDRA 5) can be considered to provide for primarily residential uses and that development Plan 2016 land use zonings supersede the LAP of 2013.

The appellant makes much of their position that the Naas Road Lands LAP should be the relevant statutory plan for the area and that the subject lands can only sustain commercial development. Despite the extension of the Naas Road Lands LAP to January 2023 I am satisfied that the relevant plan is the more recently adopted 2016 City Development Plan and its specific objectives with regard to the Vacant Site Levy contained in section 14.9, that states Z14 lands should be considered as residential for the purposes of the levy.

8.2. Vacant or Idle?

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

(i) the site is situated in an area in which there is a need for housing,

(ii) the site is suitable for the provision of housing,

(iii) 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.

8.2.2. The site must meet all three tests (housing need, suitability for housing and vacant/idle) and I will address each in turn.

8.2.3. Housing Need – The appellant argues that there is not a housing need at this location in the 2013 LAP or SDRA lands that are subject to commercial zoning, this is also linked to the appellant's contention that the site should not be considered at all for the Vacant Site Register. The appellant states that the planning authority have failed to detail all the criteria set out in section 6(4) of the 2015 Act in order to demonstrate housing need. The planning authority note that the appellant has not provided any statistical detail to substantiate the lack of a housing need and go on to state that there is a need for 47,000 residential units in Dublin by 2028.

- 8.2.4. The 2015 Act sets out in section 6(4) what exactly a planning authority should consider when assessing housing need, by reference to the housing strategy and the core strategy, house/rental prices, the number of households qualified for social housing support, and whether the number of habitable houses available for purchase or rent was less than 5 per cent of the total number of houses in the area.
- 8.2.5. Taking each subsection in turn, I can see that the assessment report prepared by the planning authority does not refer to any detail about Housing Need other than it is generally accepted that there is one. However, up to date and detailed information prepared by the City Valuer has been appended to the PA response of May 2022. The appellant points out that this information should not be allowed as the placement of the site on the register requires consideration of the year prior not current data. In any case the appellant maintains that these lands are not zoned for residential purposes and should not be considered at all. I am satisfied that the information prepared by the City Valuer is detailed, robust and clearly sets out the housing situation in Dublin over the last two years. There can be no rationale argument advanced that there has not been a housing need in the area, and that this need continues today. I am satisfied that there is a housing need in the area and the core strategy of the Development Plan would not necessarily target individual sites but would rather take a more holistic view of housing need. That is why the VSR refers to all residentially zoned land, if section 5(1)(a) is to be applied, such as in this case.
- 8.2.6. Suitability for Housing – The appellant maintains that housing would not be suitable at this location close to a busy road and with plans to develop the site for commercial purposes further solidifies this view. It is pointed out by the appellant that the 2013 LAP sets out a framework for development and commercial uses are indicated at this site. The planning authority disagree and indicate that with good design a mixed use, but primarily residential scheme could both address the road and cohabit with commercial development already in place to the rear. In any case the overall lands are zoned Z14 (SDRA 5), in which residential uses are envisaged to be the predominant land use.
- 8.2.7. There are no infrastructural constraints highlighted for these lands. Unlike the example cited by the appellant (ABP-300784-18), the subject lands are situated in an urban context where all relevant services are easily accessible and not subject to

constraints or phasing, as can be see from existing and emerging development in the area. I am satisfied that the lands are suitable for housing.

- 8.2.8. Vacant/Idle – The appellant has not advanced a use for the site other than a small portion of it that is used to accommodate car parking for the commercial unit to the north. The planning authority note this use with caution and point out that the majority of the site was and is occupied by a warehouse/factory building that is empty and without a roof. I agree that the majority of the site is without any use and therefore idle, and can be placed on the register.

8.3. **Other Matters**

- 8.3.1. 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 directed the Board to the planning report prepared for the site. The planning report records an initial site visit in 2016 and subsequent follow up visits, and these dates accord with the requirements of the 2015 Act. 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 confirm that the site at the Former Long Mile Works, Long Mile Road, Dublin 12, was a vacant site for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 2 April 2022 shall be deemed to take effect from that date.

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) That the site was and is a vacant site as demonstrated by the roofless condition of the main structure on the lands that lies idle, there is a need for housing in the area, the site is suitable for the provision of housing as demonstrated by the residential land use zoning for the area, and that insufficient reason is put forward to cancel entry on the Vacant Sites Register

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

Stephen Rhys Thomas
Senior Planning Inspector

07 December 2022