



An
Bord
Pleanála

Inspector's Report VV0002

Type of Appeal	Section 9 Appeal against section 7(3) Notice.
Location	Junction of Lennox Street and South Richmond Street, Dublin 8
Planning Authority	Dublin City Council
Planning Authority VSL Reg. Ref.	VS-0114
Site Owner	Crekav Trading GP Ltd.
Date of Site Visit	12 July 2017
Inspector	Gillian Kane

1.0 Introduction

- 1.1.1. This appeal refers to a section 7 notice issued by Dublin City Council, stating that the site at the Junction of Lennox Street and South Richmond Street, Dublin 8 has been entered on the Vacant Sites Register in accordance with the provisions of the Urban Regeneration and Housing Act 2015.

2.0 Site Location and Description

- 2.1. The subject site is located at the junction of Lennox Street and Richmond Street South in the south inner city, Dublin 8. The site is bound to the north by no. 52 Richmond Street south which is the end of a terrace (52,53 and 54) of three storey over basement protected structures. To the west, is a terrace of two storey over basement protected structures (2,4 and 6 Lennox Street). Further east, across Richmond Street South is a similarly un-used plot with hoarding, a range of premises with commercial uses on the ground floor and some residential use overhead. The area is characteristic of the transition from inner suburban to more commercial inner city area.
- 2.2. The subject site is bound by 2m high hoarding with adverting panels. No access to the site was available but the site appeared to be somewhat overgrown judging by the foliage visible over the hoarding. A gap in the hoarding afforded a glimpse of the interior of the site. The site has been excavated to below ground level with shuttering providing a retaining feature along the boundaries. Pockets of water were visible throughout the site, as was significant amounts of debris, litter and other matter.
- 2.3. Photographs and maps attached in Appendix.

3.0 Planning Authority Decision

3.1. Planning Authority Notice

On the 12th of April 2017 Dublin City Council advised the site owner that the subject site (Planning Authority reg. ref. VS-0114) had been identified as a vacant site by reference to section 5(1)(b) and 5(2) of the Urban Regeneration and Housing Act 2015. The notice stated that as of 31/03/2017, particulars of the site would be entered on the Vacant Sites Register in accordance with the provisions of section 6(2) of the Act. The notice was accompanied by a map outlining the site boundary.

- 3.2. **Register of Vacant Sites Report:** Site is zoned regeneration (Z4) and has been vacant or idle for 12 months preceding site visit of 07/04/2016. Site previously accommodated educational building that was demolished. Deep foundations have been constructed, site is overgrown and littered. Wooden hoarding and metal fencing is visible on boundaries with Protected Structures adjoining on either side. Permission granted (3015/15 refers) for a 4-storey over basement retail and office building. Length of vacancy and prominence of site contribute to a detrimental impact on immediate area. Site is served by public infrastructure and is within a conservation area.
- 3.2.1. Site should be included on the VSR on the grounds that it is in a highly visible prominent location within the city and due to the serious effect its condition has on the amenity and character of the area.

4.0 **Dublin City Development Plan 2016-2022**

- 4.1. One of the key strategies of the 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.
- 4.2. **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
- 4.3. Section 14.9 of the DCC 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.
- 4.4. **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.

- 4.5. **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.

5.0 **Planning History**

Planning Authority Reg. Ref. 3015/15: Planning permission was granted for four storey a mixed use development of c. 4,252 sq.m (total GFA) in a retail and office building.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

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

- The site was entered on the VSR on the 31/03/2107 with the Notice of Entry issuing on the 12th April 2017.

- The site was purchased by the current owner Crekav in May 2015. The site has been excavated by the previous owner with a sheet pile retaining structure installed prior to excavation.
- Due to the present physical condition of the site – excavated to a depth of 3m below ground – it is incapable of being used for housing in accordance with the provisions of section 5 of the Act. A site specific topographical survey carried out in Dec. 2014 is submitted with the appeal. The site owners confirm that no material change to the physical condition of the site has occurred in the interim.
- It is stated that the Act provides for two classes of site condition – ‘vacant’ and ‘idle’ with no definition provided for the latter.
- It is stated that both terms assume a remedy of occupation or active use. The subject site is such that it does not allow for either occupation or activation without a grant of planning permission. It is submitted that it is reasonable to assume that the Act is not meant to force landowners to rely on unlawful means to bring sites back into beneficial use.
- The appellant submits that the only lawful remedy available is to apply for planning permission. They state that they received permission for the commercial re-development of the site in July 2016 under reg. ref. 3015/15.
- It is submitted that as the physical condition of the site is incapable of being brought into beneficial use, it has not been vacant or idle for the full duration of the 12 months prior to entry onto the VSR. It is submitted that it would be reasonable to assume that the 12 month period would begin on the 28th July 2016.
- The Board is requested to determine that the site has not been vacant or idle for the duration of the 12 months preceding and therefore should not be on the Vacant Sites Register.

6.2. Planning Authority Response

The Planning Authority responded to the appeal, requesting that the following observations be noted by the Board:

- The Councils report sets out why the site was included on the VSR.
- Planning permission was approved for this site (reg. ref. 3015/15) following the initial site inspection on 08/04/2016.
- No construction has taken place since this initial site inspection.
- The Board are requested to uphold the decision of the Planning Authority and allow the site to remain on the VSR.

7.0 **Assessment**

- 7.1. By reference to the Planning Authority notice, it is noted that the subject site comprises regeneration land for the purposes of the Vacant Site Levy
- 7.2. An appeal under section 9 of the Act, the burden of showing that the site or a majority of the site was not vacant or idle 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 vacant or idle 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 DCC VSR on the 31st of March 2017.
- 7.3. The planning report states that a site visit was undertaken on the 08th of April 2016 and the site was found to be vacant or idle for the preceding 12 months (i.e. from 08th April 2015).
- 7.4. The site owner in their response to the Board have indicated that permission has been given for work to be undertaken to re-develop the site. On the date of my site visit, no work had commenced. No information or no evidence has been submitted to counter the Councils statement that the site has been vacant or idle from April 2015 to April 2016. In fact, the site owner has confirmed that no material change was undertaken between the topographical survey of December 2014 and the current time. The Act is clear that the test for inclusion is the past condition of the site, not its future development. The findings of the Council in relation to the condition of the site were confirmed by me on the date of my site visit.
- 7.5. I note the site owner's submission that the physical condition of the site is such that it is incapable of being brought into beneficial use and therefore, the Board should determine that the subject site has not been vacant or idle. In response, I refer to

Circular Letter PL7/2016, which describes the levy as a “site activation and release mechanism” which is to “incentivise the development of vacant or idle sites in urban areas...with a view to bringing such sites into beneficial use”. The appellant is correct that the Urban Regeneration and Housing Act 2015 is not the means by which a site can be brought into beneficial use and that planning permission is required. This however, has no bearing on the determination of the Planning Authority or the Board on appeal that the site is or is not vacant. That the site is not capable of beneficial use does not mean it is not vacant.

7.6. I am satisfied that the subject site was vacant and idle on the date of my site visit 12/07/2017 and that no information or evidence has been submitted by the site owner to refute the finding of the City Council that the subject site has been vacant and or idle, in accordance with the requirements of the Act, in the 12 months up to and including 31 March 2017.

8.0 Recommendation

I recommend that the Board should determine that the site at the junction of Lennox Street and South Richmond Street, Dublin was vacant or idle for the duration of the 12 months preceding the date of entry on the Vacant Sites Register on the 31st March 2017 and was still a vacant site on that date.

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 appellant’s submission and
- (c) The report of the Planning Inspector

the Board is satisfied that the site was vacant or idle for the relevant period.

Gillian Kane
Planning Inspector

18 July 2017