



An
Bord
Pleanála

Inspector's Report PL29E.VV0003

Type of Appeal	Section 9 Appeal against section 7(3) Notice.
Location	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	25 July 2017.
Inspector	Stephen Rhys Thomas.

1.0 Introduction

- 1.1. This appeal refers to a section 7(1) notice issued by Dublin City Council, stating their intention to enter the site at Hyacinth Street off Ossory Road, Dublin 3 on to the Vacant Sites Register (VSR) in accordance with the provisions of section 6(1) 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.
- 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 Planning Authority Decision

- 3.1. **Planning Authority Notice:** Dublin City Council advised the site owner that the subject site (Planning Authority reg. ref. VS-0123) had been identified as a vacant site by reference to section 5(1)(a) and 5(2) of the Urban Regeneration and Housing Act 2015. The notice, issued in accordance with section 7(1) of the Act, stated that particulars of the site would be entered on the Vacant Sites Register. The notice was accompanied by a map outlining the site boundary.
- 3.2. **Register of Vacant Sites Report:** Site is zoned 'protect, provide and improve residential amenities' (Z1). The site is in an area where housing is needed and the

site is suitable for housing. No permission can be found for the current use on site and the site 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.

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

- 4.1. The site is located on lands that are subject to zoning objective Z1 – Sustainable Residential Neighbourhoods - To protect, provide and improve residential amenities.
- 4.2. 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.
- 4.3. **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.

5.0 The Appeal

5.1. Grounds of Appeal

- 5.1.1. 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 appellant confirms that they had been advised by Dublin City Council that their site was entered on the VSR with the Notice of Entry issuing on the 12th April 2017.
- The site owner, David Lambe of Alexandra School of Motoring Private and Commercial Tuition, states that the site is a full working yard and has been for over twenty years.
- The appellant has submitted photographs to confirm the use of the yard. In addition, evidence can be produced from various parties to support the claim.

5.2. **Planning Authority Response**

5.2.1. 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.
- No further information has been submitted to support the appellant's claim that the site is a full working yard.
- No planning permission has been sought and no construction has taken place since the initial site inspection (04/05/2016).
- The Board are requested to uphold the decision of the Planning Authority and allow the site to remain on the VSR.

6.0 **Assessment**

- 6.1. By reference to the Planning Authority notice, it is noted that the subject site comprises residential land for the purposes of the Vacant Site Levy.
- 6.2. An appeal under section 9 of the Act, requires that 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 Dublin City Council VSR on the 31st of March 2017.
- 6.3. The subject site is located in an area zoned Z1 Sustainable Residential Neighbourhoods, which has the stated objective to protect, provide and improve residential amenities in the current City Development Plan. Section 14.9 of the Development Plan states that the vacant site levy applies to lands zoned Z1 residential zoned lands as they have capacity to provide residential accommodation.
- 6.4. The Council's planning report states that a site visit was undertaken on the 4th of May 2016 and the site was found to be in use for the storage of cars, boats and other vehicles. Colour photographs detail the vehicles parked on site and show a heavy goods vehicle with 'Alexandra' green livery located in the background. The Planner's report goes on to state that the site accords with Section 5(a) of the Urban and Regeneration and Housing Act 2015, insofar as the site is located in an area in

need of housing, the site is suitable for housing and that the site is vacant. The Council's conclusion is based upon the assumption that the current use of the site may be unauthorised.

- 6.5. The site owner contends that the site has been in use as full working yard for the Alexandra School of Motoring for over twenty years. The site owner has supplied photographs, to which no calendar dates have been attached and is willing to supply evidence from third parties to support his claim. There is however, no other supporting documentation to substantiate the appellant's claims.
- 6.6. The findings of the Council in relation to the condition of the site were confirmed by me on the date of my site visit. The site was in use for the storage of various types of vehicle, including taxis, motor cars and heavy goods vehicles.
- 6.7. I note the site owner's submission that the site has been in full use as a yard associated with the business of commercial and private motor tuition, the Alexandra School of Motoring, for over twenty years. I can confirm that on the day of my site visit the yard was in full use for the storage of vehicles, some of which exhibit the green livery of the aforementioned company. However, the determination of the Planning Authority or the Board on appeal that the site is or is not vacant or idle is governed by Section 6(7) of the Act. The relevant section of the Act states that in the determination of whether a site was vacant or idle for the duration of 12 months, the Board on appeal shall not have regard to any unauthorised development or use. The appellant has not produced any documentation that confirms planning permission has been granted for the use of the site for the storage of vehicles or use as a yard. In addition, the Council's planning report states that permission for the existing use has neither been sought nor granted and that enforcement action has yet to take place.
- 6.8. The Urban Regeneration and Housing Act 2015 is clear that no regard shall be had to any unauthorised development or unauthorised use. The appellant has not supplied any evidence of a planning permission for the current use of the site. The current longstanding use of the land for the storage of vehicles may well be a non-conforming use and immune from enforcement action. In planning terms, a use may be considered statute bared from enforcement action or may have been established before the appointed date (1 October 1964), however, it shall remain unauthorised

development for the purposes of the Planning and Development Act 2000 (as amended) and associated regulations. In the absence of any documentary evidence to support the appellant's claim, I consider that the existing use of the site is an unauthorised use and is therefore governed by Section 6(7) of the Urban Regeneration and Housing Act 2015. As directed by section 6(7) the 2015 Act, in determining whether the site was vacant or idle for the period concerned, the Board shall not have regard to the unauthorised use.

- 6.9. 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. Furthermore, I am satisfied that the subject site was vacant or idle on the date of my site visit. This view is formed in the context of the ongoing unauthorised use, in this instance the storage of vehicles and so no regard can be had to the said use.
- 6.10. I am satisfied that the entry of the subject site on the Vacant Sites Register of Dublin City Council should be confirmed.

7.0 Recommendation

- 7.1. I recommend that the Board should determine that the site at Hyacinth Street off Ossory Road, Dublin 3 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 though in full use as a storage yard on that date, such use is an unauthorised use that the Board shall not have regard to. Therefore, the entry on the Register should be confirmed.

8.0 Reasons and Considerations

- 8.1. Having regard to
- (a) The evidence placed before the Board by the Planning Authority in relation to the condition and use of the site over the relevant period,
 - (b) The 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.

Stephen Rhys Thomas
Planning Inspector

31 July 2017