



An
Bord
Pleanála

Inspector's Report PL29E.VV0004

Type of Appeal	Section 9 Appeal against section 7(3) Notice.
Location	Site at Military Road, Dublin 8.
Planning Authority	Dublin City Council.
Planning Authority VSL Reg. Ref.	VS-0022.
Site Owner	Office of Public Works.
Date of Site Visit	25 July 2017.
Inspector	Stephen Rhys Thomas.

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 site at Military Road, Dublin 8 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 on the eastern side of Military Road, Dublin 8. Military Road slopes gently upwards from St John's Road West and terminates at the entrance to the Irish Museum of Modern Art, Royal Hospital Kilmainham. The site boundary along Military Road comprises a 2 metre high green steel mesh fence and a small portion of a substantial coursed ashlar stone wall, 2 metres in height to the south.
- 2.2. The site is flat and overgrown with grass and other vegetation. There are a number of significant mature trees throughout the site. A coursed stone wall, approximately 2.5 metre high, bisects the site from north to south. The wall has a number of gateway openings and graffiti is present in places. There is a shed structure in the middle of the site. The Cammock River, flows to the south east.

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-0022) 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 'to consolidate and facilitate the development of inner city and inner suburban sites for mixed-use development of which office, retail and residential would be the predominant uses' (Z10). The site is in an area where housing is needed and the site is suitable for housing. The site is located in Flood Zone C and adjacent to Flood Zone A and B. The site is highly visible and a prominent location within the city. The site has serious adverse effects

on the amenity and character of the area. Planning permission granted for a National Centre for Science and Discovery, PA reference 2352/08. No recent enforcement history. 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 Z5 – City Centre – ‘To consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity’. The roadside portion of the site is located within a Specific Objective Conservation Area.
- 4.2. The site is located within the Strategic Development and Regeneration Area SDRA 7 Heuston Station and environs. A combination of mixed use and public open space/amenity is identified for the site.
- 4.3. 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.
- 4.4. **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
- 4.5. **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.
- 4.6. **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.

4.7. **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.

5.0 The Appeal

5.1. Grounds of Appeal

5.1.1. The owner of the site 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 on the 31st March 2017.
- The site has been designated as the location for a substantial development (800 personnel) to accommodate high security, specialist and sensitive Garda operational units. The site is therefore not in an area where housing is required, nor is the area in need of renewal to prevent lying idle.

- The intended development for the site falls under Section 181 of the Planning and Development Act (for the purposes of public safety or order, the administration of justice or national security or defence). The intended development is a Part 9 Development within the meaning of the Planning and Development Regulations 2001. Given that the Urban Regeneration and Housing Act 2015 is to be cited together with the Planning and Development Act 2000 (as amended), it would appear that Part 9 developments are therefore outside the scope of the Urban Regeneration and Housing Act 2015. The site should be removed from the Vacant Sites Register.

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 planning permission has been sought and no construction has taken place since the initial site inspection (01/04/2016).
- 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. Dublin City Development Plan 2016-2022

6.1.1. The site is located on lands subject to zoning objective Z5 – City Centre. Section 14.9 of the current Development Plan sets out two broad categories of vacant land that the levy may be applied to. The categories align with the Definitions (Part 2) of the Urban Regeneration and Housing Act 2015, that identifies two distinct meanings, as follows:

“regeneration land” means land identified by a planning authority in its development plan or local area plan, after the coming into 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 structures on such land;

“residential land” means land included by a planning authority in its development plan or local area plan in accordance with section 10(2)(a) of the Act of 2000 with the objective of zoning for use solely or primarily for residential purposes, and includes any structures on such land;

6.1.2. In the City Development Plan, Z5 zoned land is listed under category 2 - Lands in need of regeneration. I note that residential is a permissible use within the Z5 (City Centre) zoning objective, however, it is not the sole or primary use and so the subject site must be considered to be regeneration lands and not residential lands for the purposes of the Vacant Sites Levy.

6.2. Notice of Entry on to the Register

6.2.1. By reference to the Planning Authority Notice dated 12th April 2017, it is noted that the subject site was entered onto the Vacant Site Register under section 5(1)(a) of the 2015 Act. The Council’s planning report refers to the site as residential land for the purposes of the Vacant Site Levy. The Council, in their assessment of the vacant nature of the site, considered section 5(1)(a) with reference to residential land and indirectly section 5(1)(b) with reference to regeneration land.

6.2.2. The appellant has prepared an appeal with reference to the Notice of Entry on the Vacant Sites Register. The appellant states that the site is not in an area where housing is needed and refers to the issue of renewal but may not have fully considered matters that concern regeneration land in their grounds of appeal.

6.2.3. It is my opinion that the Notice of Entry incorrectly cited section 5(1)(a) of the 2015 Act, as follows:

5. (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 vacant or idle,

It is my opinion that the Notice should have correctly cited section 5(1)(b) of the 2015 Act, as follows:

(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 affects on the character of the area.*

6.2.4. The Notice directs the appellant to consider section 5(1)(a) of the 2015 Act, that is; the need for housing, the provision of housing and if the site of the majority of the site is vacant or idle. However, the Z5 zoning objective for the site and its inclusion under section 14.9 of the City Development Plan, requires the site to be assessed as regeneration land for the purposes of the Vacant Sites Levy, not residential lands. The Notice may have misled the owner of the site and their grounds of appeal could be deficient. Consequently, the Board does not have full information before it to make a determination and notify the planning authority on the vacant or idle status of the site in the context of regeneration land and in accordance with section 9(3) of the 2015 Act:

Where the Board determines that a site was not 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 in accordance with section 6 (2) it shall give written notice to the planning authority who shall cancel the entry on the register in respect of that site

6.3. Burden of showing status of site

6.3.1. Given the information contained in the Council's Notice, I am of the opinion that the owner of the site has been disadvantaged in their efforts to show the site was not vacant or idle within the meaning of regeneration land. The Board should note that an appeal against entry on the register places an onus on the owner of the site, section 9(2) refers:

On an appeal under this section the burden of showing that the site, or a majority of the site, was not vacant or idle for the duration of the 12 months concerned is on the owner of the site.

The 2015 Act places a burden on the owner of the site to show, on appeal, the vacant or idle nature of the site. It would in my opinion, be beyond the powers of the Board to make a determination, in which the grounds of appeal have been prepared

to respond to a Notice that incorrectly identifies the lands as residential and not regeneration lands.

7.0 Recommendation

Notwithstanding the merits or otherwise of the appellant's grounds of appeal, it is my understanding of the 2015 Act, that a defective Notice of Entry has been issued to the owner of the site and therefore limited their ability to prepare a fully informed section 9 appeal. The Board in my view, cannot consider this appeal at this time.

Given, that in my opinion the Board cannot consider the appeal and therefore cannot reach a final determination, the entry of the site on the register shall not take effect, section 9(4) of the 2015 Act refers:

Where the owner of a vacant site appeals under subsection (1) against the entry of a site on the register the entry shall not take effect until the appeal is finally determined.

The Board may consider that my assessment of the Notice is a new issue. Firstly, I note that Regulations under section 25 of the 2015 Act have not been issued in relation to Part 2 Vacant Site Levy. There is no guidance other than the 2015 Act and Circular letter PL 7/ 2016. In addition, the Board should note that the Urban Regeneration and Housing Act 2015 may be cited together as the Planning and Development Acts 2000 to 2015 and shall be construed together as one. Therefore, the provisions of section 131 of the Planning and Development Act 2000 (as amended), that sets out the powers of the Board to request submissions or observations applies. In my opinion, it would be within the interests of justice to request the parties to the appeal to make submissions or observations in relation to the reasons and considerations set out below:

8.0 Reasons and Considerations

Having regard to all of the following:

- a) The Dublin City Development Plan 2016-2022 that states the site is subject to Zoning Objective Z5 – City Centre and Section 14.9 of the Plan that sets out two categories of vacant land that the levy may apply to: lands zoned for residential purposes and lands in need of regeneration. The appeal site shall

be considered as regeneration land as it is located in Zoning Objective Z5 – City Centre.

- b) The Notice of Entry on the Register states that the site is a Vacant Site within the meaning of section 5(1)(a) of the Urban Regeneration and Housing Act 2015, in the case of a site consisting of residential land and not section 5(1)(b) that refers to regeneration lands.
- c) The appellant in responding to the Notice has had regard to the criteria for residential land as set out in section 5(1)(a) of the 2015 Act and not regeneration land as indicated on the City Development Plan maps. The appellant was prevented from showing the Board that the site, or a majority of the site, was not vacant or idle.

Given the foregoing, it is considered that parties to the appeal should be invited to make a submission or observation in relation to items a), b) and c) in accordance with section 131 of the Planning and Development Act (as amended).

Stephen Rhys Thomas
Planning Inspector

13 November 2017