



An
Bord
Pleanála

Inspector's Report PL29E.VV0006

Type of Appeal	Section 9 Appeal against section 7(3) Notice.
Location	Rear of 71-73 Cork Street and 33-41 Emerald Square, Dublin 8.
Planning Authority	Dublin City Council.
Planning Authority VSL Reg. Ref.	VS-0033
Site Owner	Kathleen Keville.
Date of Site Visit	8 th August, 2017
Inspector	Stephen Kay

1.0 Introduction

This appeal relates to a notice issued by Dublin City Council under s.7(3) of the Urban Regeneration and Housing Act, 2015 stating that a site located to the rear of Nos.71-73 Cork Street and Nos. 33-41 Emerald Square, Dublin 8 had been entered on the vacant sites register.

2.0 Site Location and Description

The site the subject of this appeal is a largely backland site located off the southern end of Cork Street in Dublin 8. The site is bounded to the east by the rear of buildings located at Nos 70-73 Cork Street with the boundary in the case of Nos. 70 and 71 comprising the rear building line of these properties. In the case of No. 72 Cork Street, the site boundary adjoins the immediate yard or garden area at the rear of this property.

To the north, the part of the site closest to Cork Street is bounded by a narrow vehicular lane that runs for approximately half the length of the boundary and which joins with Cork Street immediately to the north of No.73 Cork Street. This laneway is currently gated at the junction with Cork Street and there is a vehicular access into the site at the western end of the lane. Beyond this laneway, and adjoining the balance of the northern boundary of the site, is a warehouse building.

To the south, the site adjoins Emerald Square and the rear of two storey terraced residential properties that back onto the site. There is a vehicular entrance from Emerald Square located in the southern boundary of the site. To the west, the site adjoins an area of open space that is located within a complex of commercial / warehouse buildings.

The site is characterised by a range of outbuildings and structures that are in poor structural condition and are primarily single storey and commercial in nature. The buildings which were accessible at the time of inspection of the site contained a range of stored materials and there did not appear to be evidence of any existing commercial activity on the site.

The relationship of the site with the rear of No.71 is such that the site boundary extends right up to the rear elevation of No.71. At the time of inspection, No.71 appeared to be in habitable occupation. To the rear of this property is a small yard area that is located at a lower level than the lands to the west which form the balance of the appeal site. This yard is connected to the rest of the site by a pedestrian gate and steps.

The stated area of the site is 0.1844 ha.

3.0 Planning Authority Decision

3.1. Planning Authority Notice

The Planning Authority issued a notice dated 12th April, 2017 which advised the site owner that the subject site 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

Report notes that the site is zoned a mixture of Objective Z1 '*protect, provide and improve residential amenities*' and Objective Z4 '*to provide for and improve mixed services facilities*'. Stated that ownership of the site is unknown, that there is no record of any planning permission, that there is no record of enforcement and that having regard to the above and to the criteria set out in section 5 of the Act that the site should be included on the VSR.

4.0 Development Plan Policy

4.1. Land Use Zoning

The bulk of the site is zoned Objective Z1 under the Dublin City Development Plan, 2016-2022. The stated objective is '*To protect, provide and improve residential*

amenities'. The vision for the Z1 zone is for residential development in the city is one where a wide range of accommodation is available within sustainable communities where residents are within easy reach of services, open space and facilities such as shops, education, leisure, community facilities and amenities, on foot and by public transport and where adequate public transport provides good access to employment, the city centre and the key district centres.

As can be seen from the land use zoning and objectives map attached with this report, there is part of the eastern end of the site which is zoned Objective Z4 which has an objective '*To provide for and improve mixed-services facilities*'. Residential development is a Permissible Use on lands that are zoned Objective Z4.

4.2. Other Relevant Policies and Objectives

- 4.2.1. 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.
- 4.2.2. 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
- 4.2.3. Section 14.9 of the DCC development plan states that the VSL will apply to lands zoned Z1, Z2, Z3, Z4, Z5, Z6, Z7, Z8, Z10, Z12 and Z14.
- 4.2.4. 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.

- 4.2.5. 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 The Appeal

5.1. Grounds of Appeal

The following is a summary of the main points raised in the appeal submitted by the appellant:

- That the notice issued by the Planning Authority was issued to the wrong person (not the owner of the property Ms Kathleen Keville) and that there have been other procedural mistakes made by the council.
- That the Council have erred in the procedure of entering the site on the VSR. Specifically, it is noted that the notice dated 1st March was addressed to Mr John Keville rather than the owner Ms Kathleen Keville. Submitted that the Board must therefore determine that the entry be cancelled.

- Contended that a large part of the site is in fact the domestic garden of No.71 Cork Street. While this area is untidy it is not vacant or derelict. The only domestic access to this area is from the rear door of No.71.
- Stated that the sheds in the central part of the site were used periodically from the 1960s to the early 2000s for commercial purposes but that these were always ancillary to the domestic use and never had the benefit of planning permission. These buildings have now reverted to their domestic function.
- Noted that the Act defines 'site' as not including any structure that is part of a home and that the 'home' means a dwelling and includes any garden or portion of ground attached to and usually occupied with the dwelling.
- Contended that the balance of the site, at the western end, is residential and that access to this part of the site is only available via Ms Keville's residential property. As there is no viable vehicular access this site is not available for development.
- That the access from the north via the existing gated laneway is not a viable independent access to the subject site due to its restricted width.
- That the area indicated in blue on the map included with the appeal (area at the western end of the site) has an unoccupied house that was occupied by Ms Keville's cousin until a number of years ago. Stated that this property was accessed via the 'side gate' and that the Keville family will actively the reoccupation of this house in the near future.
- That the statement of the council that there is a shortage of housing in the Dublin City Council area is generic in nature and not site specific.
- That the statement of the Planning Officer that there is a shortage of social housing in the city council area is generic in nature rather than being site specific.
- Submitted that the single page reports relating to social housing availability and demand for housing are nowhere near detailed enough to be compliant with the legislation.

5.2. 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.
- No planning permission has been sought on the site and no construction undertaken since the original inspection of the site in May, 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 site comprises a mixture of residential and regeneration land for the purposes of the Vacant Site Levy.
- 6.2. With regard to the procedural issues raised by the appellant in this case and specifically the contention that the correct party was not informed of the serving of the notice, I note the fact that the initial letter dated 1st March, 2017 was addressed to Mr John Keville at an address on Errigal Road, Dublin 12 but subsequent Notice of Entry on the Vacant Sites Register dated 12th April, 2017, was addressed to Ms Kathleen Keville c/o Mr John Keville. The procedural issues around the serving of the notice and the validity of same is, in my opinion, an issue between the council and the appellants. The notice of entry on the register has been issued and what is provided for under s.9 of the Act is for an appeal against the determination by the council that a site was vacant or idle for the 12 month period prior to the issuing of the notice. The issues raised by the third party regarding notifications issued by the council are therefore in my opinion a private legal issue between the council and the appellants.
- 6.3. The appellants also raise issues with regard to the adequacy of the submitted statements from the Chief Valuer and the City Planning Officer relating to the determination of housing need. Specifically, it is contended that these statements are generic in nature, do not relate specifically to the appeal site and are not sufficiently detailed or comprehensive to support the statements that there is a demand for social housing across the City Council area and that there is a shortage

of housing stock for purchase and rent in the City Council area. I note that both statements provide information relating to the requirements of the core strategy and housing completions in the case of the report of the Planning Officer and the availability of housing for sale as a percentage of housing stock, price rises and rental availability and rent increases in the case of the report from the Chief Valuer. The conclusions of the two statements are in my opinion clear, and are consistent with the requirements of section 6(4) of the Act. I also note the fact that under s.9 of the Act relating to appeals, reference is only made to the making of an appeal on the basis that the site was not vacant or idle for the relevant 12 month period and the fact that the Act states that in making an appeal the onus is on the appellant to demonstrate their case. The appellant in this case has not submitted any figures, statistics or other details which would indicate that the conclusions reached in the submitted reports from the Planning Officer and the Chief Valuer are incorrect. For these reasons it is my opinion that the appellant has not put forward any clear argument that there is not a need for housing in the area and it is my opinion that the requirements of s.6(4) of the Act have been adequately demonstrated by the Planning Authority.

- 6.4. The basic case made by the appellants is that the site identified in the notice forms part of residential properties and that the definitions contained in section 5 of the Act are such that a vacant site cannot include a person's home and that a home is taken to include any garden or amenity space connected with the dwelling. It is contended that the eastern part of the site, that outlined in green on Image 3 in the appeal, comprises the garden area to No.71 Cork Street and that the area to the west, outlined in blue on Image 3, comprises the garden of a vacant house located at the south west corner of this plot. It is therefore contended that these landholdings should be removed from the Register of Vacant Sites. I note a number of issues with regard to the case made by the appellant on this issue and arising from an inspection of the site.
- 6.5. From an inspection of the site it appears that No.71 Cork Street is occupied and is in residential use. The layout of the rear of No.71 is such that there is a small yard area located at a lower level than the balance of the site. This yard area is clearly, in my opinion, part of this 'home' as defined in s.5 of the Act being '*...a garden or portion of ground attached to and usually occupied with the dwelling...*'. The red line

boundary indicated on the site map produced by Dublin City Council appears to indicate the site boundary extending up to the rear elevation of Nos. 70 and 71 Cork Street and so encompassing the yard area to the rear of No.71. From an inspection of the site I would agree with the appellants that this area is connected with the residential property at No.71 Cork Street.

- 6.6. The site area beyond the yard to the immediate rear of No.71 Cork Street is also stated by the appellant to comprise part of the garden connected with No.71 and such that it should be omitted from the Vacant Sites Register. From my inspection of the site, there is no clear indication that this area has or is in use as a garden area. The site is characterised by a generally untidy appearance with the derelict structures on the site containing a range of stored materials and items which are not domestic in nature. Similarly, in the open areas of the site there are a range of stored materials including windows, building materials and gas canisters.
- 6.7. I note that the extent of the yard area to the immediate rear of No.71 Cork Street is smaller in extent than the garden area to the rear of the adjoining property to the north at No.72 Cork Street. This may indicate that the original layout of the rear gardens to these properties would have extended beyond the existing yard area immediately to the rear of No.71. I note however that the appellant has not provided any maps or other historical documentation that indicates previous boundary of the garden to the rear of No.71. I also note that the appellant states that the part of the subject site beyond the yard area was previously used for commercial purposes including a builders' providers between the 1960s and early 2000s but that no planning permission was obtained for these uses. It is also stated by the appellant that this part of the site is accessed via the domestic garden to No.71 and has now reverted to the original ancillary domestic function. I would however note that this area of the site is accessible via the vehicular access to the site from Emerald Square. I also note that while the appellants state that this area of the site was previously in commercial use and has now reverted to residential use, there is no clear information provided that this is the case.
- 6.8. As set out at s.9(2) of the Act, the burden of proof that a site or a majority of a site was not vacant rests with the owner of the site. In this case, based on an inspection of the site, its condition and the previous commercial use of the site I do not consider that the appellants have clearly demonstrated that the area beyond the yard

immediately adjoining the rear of No.71 comes within the definition of 'home' as set out at s.5(2) of the Act. Specifically, I do not consider that on the basis of the information available it has been demonstrated that the site including buildings located to the west of the yard area immediately to the rear of No.71 Cork Street comprises '*...a garden or portion of ground attached to and usually occupied with the dwelling or otherwise required for the amenity or convenience of the dwelling*'. I do not therefore consider that this part of the site can be excluded from the Register of Vacant Sites on the basis of being a person's home. Similarly, it is my opinion on the basis of the information presented and an inspection of the site that the site the subject of this appeal is vacant and no clear evidence that the site was not vacant for the 12 month period prior to the date of entry on the register.

6.9. With regard to the western part of the site as outlined in blue on the appeal submission, I note the vacant and very poor structural condition of the cottage located on this part of the site. The appellants contend that as this dwelling was previously occupied by a cousin of the landowner and that there is an intention that residential use would be reinstated, that it should be excluded from the definition of 'site' as per s.5(2) of the Act and should not be included on the register. The structure on this part of the site, while it would appear at one time to have been in residential use, has not been occupied for a significant period. No clear documentary information has been presented by the appellant to show that the structure was occupied as a dwelling during the 12 month period prior to entry of the site on the register and the residential use of this structure appears to me to have been abandoned. I note that the appellants state that it is intended that residential use would be reinstated in this location, however no application relating to this structure has been submitted to the Planning Authority and, in any event, the presence of an application for permission or a permission would not preclude the inclusion of this part of the site on the Register.

6.10. In conclusion, based on the information contained on file and my inspection of the site I am satisfied that, with the exception of the small yard area to the immediate rear of No.71 Cork Street, the subject site was vacant and idle on the date of my site visit and that no information has been submitted by the site owner to refute the findings of Dublin City Council that the site has been vacant and idle in the 12 months preceding the date of entry of the site on the register. I am therefore

satisfied that the majority of the overall site as identified is vacant or idle and that the requirements of s.5(1)(a)(iii) and s5(1)(b)(i) of the Urban Regeneration and Housing Act, 2015 are met in this case.

7.0 Recommendation

I recommend that the Board should determine that the majority of the site located to the rear of Nos. 71-73 Cork Street and Nos. 33-41 Emerald Square, Dublin 8 was vacant or idle for the duration of the 12 months preceding the date of entry on the Vacant Sites Register on 12th April, 2017 and that the claims regarding the residential use of the site during this period such as to come within the definition of 'home' as set out at s.5(2) of the Act have not been substantiated. Therefore, the entry of the site on the vacant Sites 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 majority of the site was vacant or idle for the relevant period.

Stephen Kay
Planning Inspector

15th August, 2017