



An
Bord
Pleanála

Inspector's Report PL29E.VV0007

Type of Appeal	Section 9 Appeal against section 7(3) Notice.
Location	Site between 46a and 52 O'Connell Street, Dublin 1.
Planning Authority	Dublin City Council.
Planning Authority VSL Reg. Ref.	VS-0098.
Site Owner	Mr Joseph O'Reilly, Hammerson PLC, Hammerson Ireland Investments Limited.
Date of Site Visit	18 August 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 between 46A and 52 O'Connell Street, Dublin 1 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 western side of Upper O'Connell Street, Dublin 1, between the former Carlton Cinema now XD Cinema and an office block at number 46. The site backs onto Moore Lane and vehicular access is taken from this rear entrance.
- 2.2. The elevation to O'Connell Street comprises a faded canvas hoarding that imitates a building façade and rises 5 storeys in height. The rear elevation to Moore Lane comprises a 3 metre high concrete wall with a wide steel gate entrance.
- 2.3. The site interior comprises the scaffold structure that supports the canvas hoarding to O'Connell Street and a level surfaced area occupied by parked cars, vans and construction machinery. A steel container is located on the western side of the site.

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-0098) 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 dated 10th May 2017, issued in accordance with section 7(3) of the Act, stated that particulars of the site had been entered on the Vacant Sites Register. The notice was accompanied by a map outlining the site boundary. I have not seen the Section 7(1) Notice advising the owner of the intention to place the site on the VSR and provide an opportunity to respond in writing.
- 3.2. **Register of Vacant Sites Report:** Site is zoned 'to consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity' (Z5). The site consists of regeneration land. The site is vacant due to its appearance and is having an adverse impact upon the

character of the area. The site is highly visible and a prominent location within the city. Planning permission granted for a large scale mixed use and residential scheme, PA reference 2479/08. No 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 entire site is located within an Architectural Conservation Area and a Zone of Archaeological Interest. O’Connell Street was designated an Area of Special Planning Control 2009.
- 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 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.
- 4.5. **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 on the 10th May 2017. The appellant outlines the reasons why they missed the opportunity to respond to the planning authority in relation to the intention to enter the site onto the VSR. Other properties in their ownership in the vicinity have been deferred entry onto the VSR.
- The site has been in use as car parking for the adjacent property, for in excess of seven years, no enforcement action has been taken on this site.

- A planning permission is in place for a large mixed use development and is operable until May 2022, PA ref 2479/08.
- The site is subject to legal proceedings and it is not practical to undertake development of the site.
- The appellant is the new owner of the site.
- The site is not subject to a zoning, in which residential use is the primary use. The lands are not 'a site consisting of residential land', as defined by the Act. The site is not identified in the Development Plan as 'regeneration land' or 'regeneration area'. The site should not therefore be included on the VSR.

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. This was a result of a failure on the landowner's part to make a submission within the required time period. A similar site at 40-42 O'Connell Street, in which a submission was made within the appropriate time period, was not entered onto the VSR, because of ongoing legal proceedings and an inability to initiate a planning permission.
- No planning permission could be found for the car parking use and so the site should be considered vacant/idle for the purposes of the VSR.
- In the case of the appeal site. Given that the site is subject to legal proceedings and if development took place the owner could be found in contempt of court, the Council wish to place the site on a watch list until 2018. At a future time the Council will assess whether or not the site is still vacant and include on the VSR.
- The Council request that the Board do not include the site on the VSR.

6.0 **Assessment**

6.1. 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.

- 6.2. An appeal to the Board under section 9 of the 2015 Act requires the owner of the site to demonstrate that the site or a majority of the site was not vacant or idle for the duration of the 12 months. Section 9(3) of the 2015 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 Vacant Site Register (VSR) on the 10th May 2017.
- 6.3. The appellant contends that the site should not be considered for inclusion on the VSR because the site is not located on residential or regeneration lands as defined by Section 3 of the Urban Regeneration and Housing Act 2015. In this respect, I note that the lands are zoned Z5, Section 14.9 of the City Development Plan sets out two broad categories of vacant land where the levy may apply, lands zoned primarily for residential purposes and lands in need of regeneration. The subject site is located on Z5 zoned land and is therefore identified as in need of regeneration, inclusion on the VSR is appropriate.
- 6.4. The appellant states that the site is in use as car parking for the adjacent property, no enforcement action has been taken on this site. On the day of my site visit I noted that the site was occupied by parked cars, vans and construction machinery. 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 car parking. In addition, the Council's planning report does not mention a planning permission for the existing car parking use. A subsequent correspondence from the planning authority states that no permission for car parking on the site can be found.
- 6.5. 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 longstanding use of the land for car parking may well be 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) of 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.

- 6.6. The appellant states that a planning permission is in place for a large mixed use development and is operable until May 2022, PA ref 2479/08 and ABP reference PL29N.232347. The Act is clear: the test for inclusion is the past condition of the site from the date of entry on the Register. I refer to Circular Letter PL7/2016, Appendix 3, that states: "where a vacant site has an extant planning permission associated with it, this should not be a consideration in determining whether to apply the levy. If such a site meets the criteria for a vacant site in respect of either residential or regeneration land, then the levy may be applied". In my opinion, the site meets the criteria for inclusion on the VSR and the existence of an extant planning permission has no part to play in this instance.
- 6.7. The Grounds of Appeal state that the site is subject to legal proceedings and it is not practical to undertake development of the site. Furthermore, the appellant fears that to commence development would result in them being in contempt of court. The case made by the appellant in relation to ongoing legal proceedings on this site and others in the vicinity is outside the scope of the 2015 Act. I also note the Council's correspondence, in that they wish to place this site, similar to others, on a 'watch list' and so suspend inclusion on the VSR. Whilst legal arguments are relevant to the wider issues of the site, they are, in my opinion, outside the narrow focus of the Board's role in relation to Section 9 Appeals. Section 9(3) of the 2015 Act clearly states that the Board's role is to determine whether or not a site was vacant or idle for the relevant period.
- 6.8. The appellant states that they are the new owner of the site, though no dates are provided. Change of ownership has no impact upon the assessment of whether a site should be included on the VSR or not. Section 17 of the 2015 Act, sets out procedures in relation to the charging of the levy, change of ownership is relevant in

that instance. Irrespective of any change of ownership, the burden of demonstrating whether a site is vacant or not lies with the owner, as set out in Section 9(2) of the 2015 Act.

- 6.9. The Council's submission requests that the site should not be included on the VSR. The Council would prefer to place the site on a 'watch list' until legal proceedings conclude and then reassess if the site is vacant or not. The planning authority can at any time remove the site from the VSR if they are satisfied that it is no longer vacant, section 10(2) of the 2015 Act, refers. In my view, there is no scope in the 2015 Act under Section 9 appeals for the Board to consider anything other than the status of a site in relation to its vacant or idle condition.
- 6.10. The findings of the Council in relation to the condition of the site were confirmed by me on the date of my site visit. 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 parking of cars and other vehicles, so no regard can be had to the said use. In addition, the site is located in an Architectural Conservation Area and in one of Dublin's principle streets. In my view, the condition of the site has an adverse effect on existing amenities and the character of the area.
- 6.11. 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 between 46a and 52 O'Connell Street, Dublin 1 was vacant or idle for the duration of the 12 months preceding the date of entry on the Vacant Sites Register on the 10th May 2017 and though in full use as a car park 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

11 September 2017