



An
Bord
Pleanála

Inspector's Report 29E.VV0015

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| Type of Appeal | Section 9 Appeal against section 7(3) Notice (VV.123456) |
| Location | No's. 32-40 Benburb Street, Dublin 1 |
| Planning Authority | Dublin City Council |
| Planning Authority VSL Reg. Ref. | VS0013 |
| Site Owner | Benburb Street Property Company Ltd. |
| Date of Site Visit | 17 th November 2017 |
| Inspector | Donal Donnelly |

1.0 Introduction

- 1.1. 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 at No's. 32-40 Benburb Street, Dublin 1 has been entered on the Vacant Sites Register.

2.0 Site Location and Description

- 2.1. The appeal site is located on Benburb Street in Dublin city centre on the northern side of the River Liffey and to the west of the main commercial core. Benburb Street continues on an east to west alignment from Queen Street to Croppies' Acre. The site sits on the northern side of the road opposite Ellis Street, which provides access to the Quays.
- 2.2. The site is bounded by an apartment development to the west and by a terrace of derelict buildings to the east. To the north of the site is the Law Society of Ireland. The Luas operates in both directions on Benburb Street and there is a westbound traffic/ parking lane to the southern side of the tracks.
- 2.3. The stated area of the site is 0.4378 hectare. There is a warehouse in the north-western corner and parts of the remainder of the site are overgrown and not in use. The northern part of the site was being used at the time of my site visit as a construction compound for external works taking place to the north of the site. An access ramp had been created to the level of the adjoining site. The road fronting boundary comprises hoarding with artwork and there are two available accesses, one of which is in use.

3.0 Planning Authority Decision

3.1. Planning Authority Notice

- 3.1.1. Dublin City Council issued Notice of Entry on the Vacant Sites Register to the site owner stating that the site at No's. 32-40 Benburb Street, Dublin 1 is a Vacant Site within the meaning of the Urban Regeneration and Housing Act, 2015, Sections 5(1(b)) & 5(2) and that the particulars of the said site have been entered on the Vacant Sites Register in accordance with the provisions of Section 6(2) of the Urban

Regeneration and Housing Act, 2015. The site boundary is outlined on an accompanying map and the Notice is dated 28th July 2017.

3.2. Register of Vacant Sites Report

3.2.1. The Planner's Report noted the following:

- Site inspection on 13th April 2017 noted that approximately one third of the building on site was in use for storage and the remainder of the site contained some building debris, but was mainly cleared of all structures.
- It is considered that the site fits the criteria outlined under Section 5(b) of the Urban Regeneration and Housing Act, 2015 and should be included on the Register.
- Following on from second site inspection, it is noted that while a small portion of the warehouse unit to the rear of the site appears to be used as storage space, the majority of the site is vacant or idle and is having an adverse effect on the character of the area.

4.0 Development Plan Policy

4.1. The site is zoned *"Z5 – to consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity."*

4.2. Section 2.2.8.4 notes that active land management including the implementation of the vacant land levy are key planning policies to implement the vision and core strategy of the Development Plan. The Development Plan will promote the development and renewal of areas in need of regeneration to prevent:

- adverse effects on existing amenities in such areas, in particular as a result of the ruinous or neglected condition of any land;
- urban blight and decay;
- anti-social behavior; or
- a shortage of habitable houses or of land suitable for residential use or a mixture of residential and other uses.

- 4.3. It is a policy of the Council (QH5) *“to promote residential development addressing any shortfall in housing provision through active land management and a coordinated planned approach to developing appropriately zoned lands at key locations including regeneration areas, vacant sites and under-utilised sites.”*
- 4.4. It is recognised in Section 6.5.4 that the speedy re-development of extensive vacant/under-utilised sites, especially in the city centre zoned area, is critical to sustainable development. In this regard Policy CEE15 seeks *“to promote and facilitate the transformation of regeneration areas, especially inner city areas, as a key policy priority and opportunity to improve the attractiveness and competitiveness of the city, including by promoting high-quality private and public investment and by seeking European Union funding to support regeneration initiatives, for the benefit of residents, employees and visitors.”* Policy CEE16 also includes the Council’s general aims for active land management and the implementation of the vacant land levy.
- 4.5. Section 14.9 sets out the land use zonings for both residential or primarily residential purposes and for development and renewal of areas in need of regeneration.

5.0 The Appeal

5.1. Grounds of Appeal

- 5.1.1. An appeal against the decision of the Council to place the site on the Vacant Sites Register was submitted to the Board on behalf of Benburb Street Property Company. The grounds of appeal are summarised as follows:
- Benburb Street Property Company was set up by the Law Society of Ireland to manage and develop its property at Benburb Street for the Law Society’s own purpose.
 - Large single storey structure on site is in use for storage purposes associated with the activities of the Law Society – map accompanying the Council’s Notice excludes the existing structure on this site but access is required through the site.

- Land and the existing structure is maintained and is not in a ruinous or neglected condition, nor is there any anti-social behaviour taking place on site.
- Site was acquired so that the envisaged expansion of accommodation required for the Law Society over the next 50 years could occur adjacent to its historic base.
- Law Society has commissioned an update of the previously prepared masterplan and it is the intention to commence development on site in the next 3-4 years.
- Imposition of Vacant Site Levy will further undermine Law Society's ability to develop the site and will simply serve to further delay the redevelopment of these lands.
- On the basis that there is activity associated with the operations of the Law Society currently being undertaken on site, it is argued that the property is not vacant or idle.
- Owner is aware of the responsibility of maintaining an attractive and activated street frontage along Benburb Street and has gone out of their way to maintain the quality of streetscape by sponsoring art installations. Applicant would be prepared to further improve Benburb Street boundary.
- Owners are in discussions with adjoining site owners to give access to facilitate construction of permitted hotel.

5.2. Planning Authority Response

5.2.1. Dublin City Council responded to the appeal with the following comments:

- While a small portion of the warehouse structure appeared to be in use for storage, the majority of the site, including hoarding surrounding the site, was vacant and not in use.
- No planning application has been submitted for development on site since the second site visit in April 2017.

- It was noted at third site inspection on 22nd August 2017 that the main entrance to the site had been altered and some construction material and equipment were being stored on site – construction works is external works.
- Z5 lands is considered regeneration land for the purposes of the Vacant Sites Register.
- Subject site is lying idle and having regard to this vacancy and its presentation, it is considered to have a negative effect on the character of the area.

6.0 Assessment

6.1. The appeal site at No's. 32-40 Benburb Street, Dublin 1 has been entered onto the Vacant Sites Register in accordance with the provisions of Section 6(2) of the Urban Regeneration and Housing Act, 2015. It was considered by Dublin City Council that the site is a Vacant Site within the meaning of the Urban Regeneration and Housing Act, 2015, Sections 5(1(b)) & 5(2).

6.2. Under Section 5(1)(b) of the Urban Regeneration and Housing Act, 2015 a site is vacant in the case of regeneration land if:

(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 effects on the character of the area.

6.3. The site is zoned “Z5 – to consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity.” Z5 zoned lands are included in the Dublin City Development Plan, 2016-2022 as lands with the objective of development and renewal of areas in need of regeneration.

- 6.4. 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 with the owner of the site. The site owner, Benburb Street Property Company, has appealed the decision of Dublin City Council to place the site on the Vacant Sites Register.
- 6.5. It is noted in the appeal submission that Benburb Street Property Company was set up by the Law Society of Ireland to manage and develop this property for the Law Society's own purpose. The site was acquired for the envisaged expansion of the Law Society over the next 50 years next to its historic base on Blackhall Place. An update of a previously prepared masterplan for the site has been commissioned by the Law Society and it is the intention that development will commence on site in the next 3-4 years.
- 6.6. In addition to the above, it is submitted that there is an activity associated with the Law Society taking place on site, and on this basis it is argued that the site is not vacant or idle. A large warehouse on site is in use for storage purposes for the Law Society and access to this structure is required through the site from Benburb Street.
- 6.7. In addition, the appellant states that the site owner has maintained an attractive and activated street frontage along Benburb Street by sponsoring art installations on hoarding. The site owner is also prepared to allow access to the site to facilitate the construction of an adjoining permitted hotel and it should be noted that the site is currently being used for construction works taking place on an adjoining site to the north.
- 6.8. Under Section 5(b)(i) of the Urban Regeneration and Housing Act, 2015 a site is vacant if the site, *or the majority of the site*, is vacant or idle. The appellant's argument that the site is actively in use for storage purpose might only be valid for the purposes of the vacant site levy if such a use related to the majority of the site. The existing warehouse structure and access route thereto only accounts for a small part of the overall site area. Furthermore, the Planning Authority confirmed that only a small portion of the structure itself was being used for storage at the time of the site visit on 13th April 2017. The remainder of the site not in use as a temporary construction compound or occupied by the warehouse, is in a vacant, overgrown or disused condition.

6.9. It is stated within Appendix 3 of Circular Letter PL7/2016 that “a site that is vacant and used for temporary purposes would not be considered as being in full and active use.” The existing use of part of the site as a construction compound for external works should not therefore be a consideration when determining whether or not the site is in use. The construction compound does not relate to the commencement of any development permitted on site and the site owner does not intend to commence development on site for another 3-4 years. Therefore, a levy is applicable until the site is developed or brought into use, at which time the site can be removed from the Vacant Sites Register.

6.10. Having regard to the above and based on the information contained on file and my inspection of the site, I would be satisfied that the site, or majority of the site, has been vacant or idle for the duration of the 12 months preceding its entry on the Register on 28th July 2017. Overall, the site has been in a disused and neglected condition for some time, and notwithstanding the appearance of the hoarding along the street fronting boundary, this adversely affects the existing amenities and reduces the amenity provided by existing public infrastructure and facilities. The vacant site also has adverse effects on the character of the area and its entry onto Dublin City Council’s Vacant Sites Register should be confirmed by the Board.

7.0 Recommendation

7.1. I recommend that the Board should determine that the site at No’s. 32-40 Benburb 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 28th July 2017. 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.

Donal Donnelly
Planning Inspector

22nd November 2017