



An
Bord
Pleanála

Inspector's Report PL29E.VV0017

Type of Appeal	Section 9 Appeal against section 7(3) Notice.
Location	Site adjacent to Marlborough Court (bounded by Marlborough Mews), Dublin 7.
Planning Authority	Dublin City Council.
Planning Authority VSL Reg. Ref.	VS-0455.
Site Owner	Córas Iompair Éireann.
Date of Site Visit	3 November 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 adjacent to Marlborough Court (bounded by Marlborough Mews), Dublin 7 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 to the rear of property along Marlborough Mews and Marlborough Court off Marlborough Road. The site can be accessed from both Marlborough Road and Marlborough Mews. There is no entrance gateway to the site, a low masonry wall with a palisade fence defines the boundary to Marlborough Road.
- 2.2. The site is bound to the west by a double track railway situated in a deep cutting. The back gardens and backyards of terraced dwellings along Marlborough Mews and the semi-private amenity areas associated with Marlborough Court adjoin the eastern boundary of the site. The majority of the site is overgrown with vegetation and mature trees. The site is uneven and is notably higher than the existing ground level of residences to the east and slopes steeply down to the railway to the west.

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-0455) 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(3) of the Act, stated that particulars of the site have been 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. There is no evidence that the site is in use associated with the railway, the site appears to be idle. Site should be included on the VSR.

4.0 Development Plan / Planning History

- 4.1. The Dublin City Development Plan 2016-2022 is the operative development plan. 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.
- 4.7. **Planning History**
- None.

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 by Notice of Entry issued on the 28th July 2017.
- Due to operational requirements the site is reserved for essential works to bring the rail line back into operation. The rail line is back in operational use since 21st November 2016.
- Given the proximity of the site to the rail line, CIE should be the sole deciders of what type and when development occurs on the site.
- CIE/Irish Rail take an active interest in what development occurs along rail lines and responds to comments invited from planning authorities. The disposal of lands in the control of CIE/Irish Rail are informed by safety requirements along railways.
- The site should not be included on the VSR, on the basis that CIE/Irish Rail wish to retain the lands in order to ensure the safe operation of the railway.

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:

- On the day of site visit (16th August 2016), there was no evidence that the site was in use for the works required to bring the railway back into operational use. The evidence of mature trees on site suggest that the site has not been used for some time.
- The Board are requested to uphold the decision of the Planning Authority and allow the site to remain on the VSR.

An additional correspondence dated 15th September 2017 from the Council contained an attachment that concerns literature outlining the subject lands advertised for sale.

6.0 Assessment

- 6.1. 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 28th July 2017.
- 6.2. 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. 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.
- 6.3. The Council's planning report states that a site visit was undertaken on the 16th August 2016 and the site was found to be overgrown with vegetation and mature trees. Colour photographs detail the condition of the site as viewed from the roadside. The Planner's report goes on to state that the site accords with Section 5(1)(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.
- 6.4. The site owner contends that the site has been reserved in order to facilitate the bringing into operational use the adjacent railway. In addition, the railway has been in operational use since November 2016 and the subject lands are still required in order to ensure the safe operation of the railway.
- 6.5. 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 interior is overgrown with mature hedges and trees. The site is inclined, uneven and soft underfoot from the build-up of leaf litter over time. There is no evidence of maintenance or upkeep. There is no evidence that the site has been used for any purpose in the recent past or at present and therefore the site is both vacant and idle.

- 6.6. I note the site owner's submission that the lands must be retained in order to facilitate essential works and to ensure the safe operation of the railway. However, the appellant has not provided sufficient evidence to demonstrate that the lands concerned have in the past been used for works along the railway line or that the lands are needed in the future. I have not seen any planning permission in relation to railway works. The appellant has not outlined any information with regard to appropriate clearance distances from a railway line that must be free from development. I do note that the lands are zoned residential in the current City Development Plan and no clearance distances concerning safety along a railway line are indicated on the relevant maps. Irrespective of 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"; neither the appellant or the planning authority have provided evidence of any planning permissions for the site.
- 6.7. Given the foregoing, I conclude that the site is suitable for housing and located in an area in which there is a need for housing and thus in accordance with Section 5(1)(a) of the 2015 Act. Furthermore, I am satisfied that the subject site was vacant or idle on the date of my site visit.
- 6.8. 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 in accordance with section 9(5) of the Urban Regeneration and Housing Act 2015, the Board should confirm that the site adjacent to Marlborough Court (bounded by Marlborough Mews), Dublin 7 was vacant or idle for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 28th July 2017 shall be deemed to take effect from that date.

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

21 November 2017