



An  
Bord  
Pleanála

## Inspector's Report PL29E.VV0018

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<b>Type of Appeal</b>	Section 9 Appeal against section 7(3) Notice.
<b>Location</b>	Site to the rear of 29-35 Erne Street Upper, Dublin 2.
<b>Planning Authority</b>	Dublin City Council.
<b>Planning Authority VSL Reg. Ref.</b>	VS-0131.
<b>Site Owner</b>	Rail Investment Limited.
<b>Date of Site Visit</b>	2 November 2017.
<b>Inspector</b>	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 to the rear of 29-35 Erne Street Upper, Dublin 2 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 northern side of Boyne Street and south of the Dublin to Wexford Railway line. The rear gardens of terraced houses along Erne Street Upper back onto the site and the western side of the site adjoins a garage/warehouse building.
- 2.2. The site comprises level ground overgrown with low vegetation, mainly grass. The site interior has the appearance of little recent use and is generally unmaintained. The site boundary along Boyne Street comprises a high masonry wall with steel sheeted gates and corrugated steel screen to a doorway and timber screen to a window. The sheeted steel gates and corrugated steel screen are marked with graffiti and the timber window screening is partially burnt. All other boundaries of the site adjoin existing private property and do not front onto the public domain.

### 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-0131) had been identified as a vacant site by reference to section 5(1)(b) and 5(2) of the Urban Regeneration and Housing Act 2015. The notice dated 28<sup>th</sup> July 2017, issued in accordance with section 7(3) of the Act, stated that particulars of the site had been entered onto 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 provide for and improve mixed-services facilities' (Z4). The site is in flood zone B and consists of regeneration land. The site is vacant due to its appearance and is having an adverse impact upon the character of the area. No enforcement history. 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 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.'
- 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.
- 4.7. **Planning History**
- PA reference **4177/16**. Office Building. No decision.

## 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 solicitor for the appellant states that the owner has recently acquired the site and is in the process of obtaining planning permission to build.
- The site has been and is currently in use for car parking associated with Holles Street Hospital and KBC Bank.

### 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:

- A planning application has been lodged (PA reference 4177/16 refers), but no decision has been made.
- No planning permission is in place for the car parking use.
- The site should be considered vacant/idle for the purposes of the VSR.

## 6.0 Assessment

6.1. 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.

6.2. The subject site was entered onto the Dublin City Council Vacant Site Register (VSR) on the 28<sup>th</sup> July 2017. The planning authority carried out a site inspection on the 24<sup>th</sup> March 2016. By reference to the planning authority notice, it is stated that the subject site comprises regeneration land for the purposes of the Vacant Site Levy. The subject site is located in an area zoned 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.’ in the current City

Development Plan. Policy QH3 states that it is policy of the Council 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. This assessment takes into account the characteristics of the site in the context of Section 5(1)(b) regeneration land.

- 6.3. The appellant states that the site is in use as car parking for Holles Street Hospital and KBC Bank. On the day of my site visit I observed that no cars were parked on the appeal site. In addition, it is unlikely that cars have been parked on the site for some time. I would suggest that the appellant has included the uses associated with the site to the west, as I observed a small number of cars parked inside that warehouse/garage building. The grounds of appeal with regard to car parking do not apply to the subject site.
- 6.4. The appellant states that a development proposal is in the planning process. The planning authority have supplied the relevant reference number 4177/16. 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 a valid planning application yet to be decided has no part to play in this instance.
- 6.5. 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.
- 6.6. 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 has no current use by virtue of the empty nature of the site, the existence of uncut grass and other vegetation and no recent

signs of maintenance. The site is therefore vacant and its lack of use indicates idleness. In accordance with section 6(6) of the 2015 Act, that states:

*(6) A planning authority, or the Board on appeal, shall determine whether or not 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 for the purposes of this Part by reference to whether—*

*(a) land or structures in the area were, or are, in a ruinous or neglected condition,*

*(b) anti-social behaviour was or is taking place in the area, or*

*(c) there has been a reduction in the number of habitable houses, or the number of people living, in the area,*

*and whether or not these matters were affected by the existence of such vacant or idle land.*

- 6.7. The site being vacant or idle has adverse effects on the character of the area by reference to the neglected condition of the site and the appearance of the site boundary to Boyne Street that indicates anti-social behaviour was or is taking place. I am satisfied that the character of the area is affected by the existence of such vacant or idle land. 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 to the rear of 29-35 Erne Street Upper, Dublin 2 was vacant or idle for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 28<sup>th</sup> 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.

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Stephen Rhys Thomas  
Planning Inspector

28 November 2017