



An  
Bord  
Pleanála

## Inspector's Report PL29E.VV0019

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<b>Type of Appeal</b>	Section 9 Appeal against section 7(3) Notice.
<b>Location</b>	274 North Circular Road, Dublin 1.
<b>Planning Authority</b>	Dublin City Council.
<b>Planning Authority VSL Reg. Ref.</b>	VS-0054.
<b>Site Owner</b>	Ziggurat Circular Limited Ireland.
<b>Date of Site Visit</b>	14 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 at 274 North Circular Road, 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 accessed from a gate lodge entrance on the southern side of the North Circular Road, in the north Dublin suburb of Phibsborough. The site is located to the rear of Rosemount Road and behind houses along the eastern side of Rathdown Road. The newly constructed cross city Luas Line is located along the eastern boundary of the site and a stop is located adjacent to the subject site. The Dublin Bus Broadstone Depot is located south east of the site and Great Western Square Architectural Conservation area is situated to the east. A fish processing plant is located to the southern tip of the site. The development site of Grangegorman DIT campus is located close by to the south. The overall site area is 1.3635 Hectares.
- 2.2. The site comprises the former grounds of Highfield House, now demolished, the gate lodge remains. There are a large number of mature trees throughout the site and on the boundaries. A laneway separates the site from the rear boundaries of houses along Rathdown Road. Properties along Rosemount Road are separated from the site by a narrow pedestrian passage and by garden boundary walls. A water tower associated with the former railway infrastructure in the area is located within the site but does not form part of the application lands.
- 2.3. The site is generally level, but slopes gently downwards south from the North Circular Road. In addition to the water tower, there are portions of a substantial stone wall that divides the site. The boundary to the east and southern portion of the site adjacent to the Luas line comprises a green mesh fence and stone wall topped with concrete. The bank to the cutting has been landscaped with shrubs and trees. A stout concrete block wall mounted with a box section railing forms the boundary to the rear laneway of Rathdown Road. The boundary to the rear laneway with houses along Rosemount Road comprises a poorly maintained chain link fence, vegetation and garden boundaries.

2.4. There is evidence of recent site clearance works, insofar as the site boundaries have been raked back, some trees have protective fence surrounds and there are site markings. There was a large tracked excavator on the site together with a small temporary site office, however, no works were being carried out during my site visit.

### 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-0054) 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 and dated 28<sup>th</sup> July 2017.
- 3.2. **Register of Vacant Sites Report:** Site is zoned objective Z1, which seeks 'to protect, provide and improve residential amenities' and objective Z2, which seeks 'to protect and/or improve amenities of residential conservation areas'. Permission has been granted (2313/12) for 88 houses. The site is situated in an area in need of houses and is suitable for housing. The site is considered to be vacant or 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 majority of the site is located in objective Z1, which seeks 'to protect, provide and improve residential amenities'. The remainder of the site towards the northern end is subject to zoning objective Z2, which seeks 'to protect and/or improve amenities of residential conservation areas'.
- 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**

PA reference **4262/16** and An Bord Pleanála reference **PL29N.248726**. Permission granted for student accommodation with 444 bed spaces, renovation, extension and change of use of an existing gate lodge to student accommodation. October 2017.

PA reference **2313/12** and An Bord Pleanála reference **PL29N.240682**. Permission for the construction of 52 apartments, 33 houses, extension and refurbishment of existing gate lodge, 93 car parking spaces, 52 bicycle parking spaces and ESB substation. March 2013.

PA reference **1384/07** and An Bord Pleanála reference **PL29N.222729**. Permission for modifications to proposed development granted under Reg.Ref; 5260/04 (168 apartments) comprising modifications to gate lodge and revised entrance arrangements. October 2007.

PA reference **5260/04**. Demolish existing house, relocation and rebuilding of existing gate lodge, construction of 171 no. residential units. February 2007.

There have been numerous permissions for amendments to PA reference 5260/04, however, in 2012 permission was refused to extend the appropriate period.

## **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 states that it is their intention to implement a planning permission (currently the subject of an appeal to the Board). To this end, they have carried out a number of actions to achieve a permission. These actions are considered to comprise activity in relation to the site and therefore the site cannot be considered to be idle.
- With reference to section 6(6) of the 2015 Act, the site does not have any adverse effects on the amenities of the area and does not affect the area's character or reduce the amenity provided by existing public infrastructures facilities. The site is secured and the site has been cleared in readiness for development works to take place. The site is subject to weekly security patrols and there is no evidence of anti-social behaviour.

- There is no evidence to suggest that there has been a reduction in housing in the area as a result of the lands not being developed.
- The site should not be described as regeneration land. Furthermore, the site does not meet all the criteria set out in the 2015 Act to be considered vacant or idle, and should not be placed 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.
- An active planning application on the site is noted, however, no construction has taken place since the inspection on the 18<sup>th</sup> May 2016.
- The site is considered to be in residential lands for the purpose of the VSR. The site is located in an area in need of housing, the site is suitable for housing and the majority of the site is vacant/idle.
- 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. 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 28<sup>th</sup> July 2017.
- 6.2. The site is located in an area subject to zoning objective Z1, which seeks 'to protect, provide and improve residential amenities' and objective Z2, which seeks 'to protect and/or improve amenities of residential conservation areas'. The site is considered to constitute residential lands, for the purposes of the 2015 Act.
- 6.3. The Council's planning report states that a site visit was undertaken on the 18<sup>th</sup> May 2016 and the site was found to be vacant/idle. 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. The site is located in an area where housing is needed and the site is suitable for housing.

- 6.4. It is the appellant's stated intention to carry out development as soon as a final grant of permission issues for student accommodation. Permission has recently been granted by the Board for student accommodation, ABP reference PL29N.248726 refers. In addition, the appellant states that the activity to obtain planning permission and some ongoing site clearance work demonstrates the site has not been idle.
- 6.5. In addition to the recent decision of the Board in relation to student housing, I note the site has an extant planning permission for 85 residential units, ABP reference PL29N.240682 refers. Notwithstanding extant planning permissions 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". If the site meets the criteria for inclusion on the VSR, the existence of an extant planning permission has no part to play in this instance.
- 6.6. The condition of the site has altered since the findings of the Council on the 18th May 2016. On the day of my site visit I observed that site clearance works have occurred within the site interior. The works are of a minor nature and could be considered to comprise the general upkeep and maintenance of the property. I acknowledge that the site has valid planning permissions for development and that the works already carried out may comprise the implementation of a planning permission. However, given the minor scale of the works already carried out, I do not consider that significant development has commenced on site or that the site is being put to beneficial use. The site is therefore vacant or idle. The Board should note under section 10 of the 2015 Act, that the entry of a site on the register can be cancelled, if no longer vacant, as follows:

*(1) The owner of a vacant site that stands entered on the register under section 6 (2) shall notify the planning authority in whose functional area the site is located if it is no longer vacant or idle.*



*(2) If, at any time, a planning authority is satisfied that a site that stands entered on the register under section 6 (2) is no longer a vacant site it shall cancel the entry on the register in respect of that site.*

- 6.7. I note the appellants comments in referring to the planning process as an action which should render the site active. However, the 2015 Act does not indicate that administrative activity in relation to a site, such as obtaining planning permission, should be considered to deem a site not vacant or idle. In addition, the Board should note that the Urban Regeneration and Housing Act 2015 may be cited together as the Planning and Development Acts 2000 to 2015 and shall be construed together as one. In that context, the Board may wish to consider the definition of development in the Planning and Development Act. I do not consider that the activities listed by the appellant comprise either significant site works or a permitted and ongoing use of the lands.
- 6.8. I note the appellant's references to section 6(6) of the 2015 Act, and how greater clarity can be applied to the assessment of adverse effects. However, section 6(6) of the 2015 Act relates to 'regeneration lands' and not 'residential lands' under which the Notice was served. It is my understanding of the 2015 Act that if a site is considered to be residential land for the purposes of the Levy, then section 6(4) and (5) of the 2015 Act should apply. Consequently, section 6(6) of the 2015 Act applies only to 'regeneration lands' as it is whether the condition of the site impacts upon the amenities of the area which is clarified under that section. The good condition of the site, its upkeep, maintenance and lack of antisocial behaviour is welcomed, however, it has no bearing on the assessment of vacant or idle in the context of residential lands.
- 6.9. The site is zoned residential and as stated by the planning authority, there is a need for housing in the area. In addition, the site is suitable for the provision of housing as evidenced by an extant planning permission and the residential land use zoning. Given the foregoing, I conclude that the majority of the site is vacant or idle in accordance with Section 5(1)(a)(i)(ii) and (iii) of the 2015 Act.
- 6.10. 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 at 274 North Circular Road, Dublin 1 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

21 November 2017