



An
Bord
Pleanála

Inspector's Report PL29E.VV0028

Type of Appeal	Section 9 Appeal against section 7(3) Notice.
Location	519 to 533 North Circular Road, Dublin 1.
Planning Authority	Dublin City Council.
Planning Authority VSL Reg. Ref.	VS-0105.
Site Owner	Irish Residential Properties REIT.
Date of Site Visit	14 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 at 519-533 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 located at 519-533 North Circular Road, Dublin 1, in the north inner city of Dublin. The site can be accessed directly from the North Circular Road and Portland Street North.
- 2.2. The site is bound to the north by a private laneway and new apartment development, and to the east by warehouse units.
- 2.3. The site comprises: a number of warehouse/workshop buildings that can all be accessed internally. The elevation to Portland Street North comprises a well maintained stone faced wall with concrete openings and roller shutter doors. The elevation to the North Circular Road comprises a mixture of stone facing and render finishes, completed by a two storey element with narrow window openings and Suzuki lettering. Roller shutters and wire mesh protect openings along this elevation. There are few internal fixtures and fitting other than strip lighting, doors and some internal partitions.

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-0105) 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 and dated 28th July 2017, 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 'to consolidate and facilitate the development of inner city and inner suburban sites for mixed-use development of which office, retail and residential would be the predominant uses' (Z10). The site is

in an area which is a key route into the city and its condition is having an adverse effect on the character of the area. The site is considered 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 site is located on lands that are subject to zoning objective Z10 – ‘to consolidate and facilitate the development of inner city and inner suburban sites for mixed-use development of which office, retail and residential would be the predominant uses’.
- 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 **2757/13**. Permission for 55 apartment units. September 2013.

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 with the Notice of Entry issuing on the 28th July 2017.
- The agent for the appellant sets out the planning history of the site, that includes an extant permission for a mixed use development of 55 apartments,

PA reference 2757/13 refers. Given revised apartment standards and the new City Development Plan it is the appellant's intention to lodge a revised planning application for 61 apartments. Formal section 247 pre-planning discussions have commenced on a revised design proposal.

- The appellant sets out their track record with record to the construction of apartments and their place in the Irish rental market.
- The appellant has recently acquired the site, October 2014.

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.
- The extant planning permission on the site and engagement with pre-planning discussions are noted, however, no construction has taken place since the inspection on the 19th May 2016.
- 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 28th July 2017.
- 6.2. The subject site is located in an area zoned Z10 - 'to consolidate and facilitate the development of inner city and inner suburban sites for mixed-use development of which office, retail and residential would be the predominant uses' in the current City Development Plan. Section 14.9 of the Development Plan states that the vacant site levy applies to lands zoned Z10 as they have capacity to provide residential accommodation. The site is considered 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 19th May 2016 and the site was found to be vacant/idle and was having an adverse impact upon the appearance of the area. 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, however, the relevant paragraphs taken from the 2015 Act refer to section 5(1)(b) regeneration land. The planning authority may have applied the test of whether the site is vacant/idle against section 5(1)(b) regeneration land and not 5(1)(a) residential land. I do not consider this to be a barrier to the site's placement on the register as the Notification issued to the land owner specifically mentions section 5(1)(a) of the 2015 Act that refers to residential land.
- 6.4. The appellant states that the site has an extant planning permission that can be implemented until October 2018. In addition, given new apartment guidelines and new policies in the City Development Plan, section 247 pre-planning discussions are ongoing in order to prepare a new planning application. 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 register, the existence of an extant planning permission has no part to play in this instance.

- 6.5. The appellant states that they are the new owner of the site. Change of ownership has no impact upon the assessment of whether a site should be included on the register 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 external appearance of the site is one of vacancy and no apparent use is being carried out at present. This conclusion is reinforced by an internal examination of the buildings. There are few internal fixtures or fittings and it would appear that the buildings have not been used for any beneficial purpose in the recent past.
- 6.7. The site is zoned residential and this suggests 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.
- 6.8. 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 at 519-533 North Circular Road, Dublin 1 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