



An
Bord
Pleanála

Inspector's Report PL 29E.VV0029

Type of Appeal	Section 9 Appeal against section 7(3) Notice (VV.0029)
Location	Rear of 21 and 22 Prospect Road, Dublin 9
Planning Authority	Dublin City Council
Planning Authority VSL Reg. Ref.	VS-0435
Site Owner	Otimo Capital Limited
Date of Site Visit	20/11/2017.
Inspector	Dolores McCague

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 to the rear of Nos. 21 and 22 Prospect Road, Dublin 9 had been entered on the vacant sites register.

2.0 Site Location and Description

- 2.1. The address of the site is given as to the rear of 21 and 22 Prospect Road, Dublin 9. The site has frontage to Lindsay Grove, a short cul de sac which runs east from Prospect Rd.
- 2.2. As it extends north Phibsborough Road / Prospect Rd crosses the Royal Canal and two railway lines in quick succession (Crossguns Bridge). Immediately north of the second railway line is Lindsay Grove, with flanks of property on Prospect Rd to either side at the start of the road and a terrace of 5 two storey houses set back behind small front gardens and a footpath, along its northern side. Along the south it is bounded initially by a short, narrow, surfaced strip. Notices state that this is for residents parking. This area is to the front of a vehicular entrance, a 2m high wall and a two storey building. Beyond the parking strip and separated from it by a stone barrier, there is a landscaped strip which is planted with grass and some small trees: this area screens the site to the rear. Lindsay Grove ends at a gateway entrance where a road continues following the line of the road in Lindsay Grove. There are long stone buildings to either side of this internal roadway with openings in the style of carriage entrances. There is a large surface car park associated with the businesses here which includes an media/advertising business, Bold & Brave.
- 2.3. According to the OS historic mapping, the area south of the road at Lindsay Grove was formerly part of the railway embankment/platform at Glasnevin Station. The building to the north, within the gated area appears on historic mapping, carried out between 1837 and 1842 and predating the railway.

- 2.4. The site appears to follow the outline of a building which is mainly located behind the parking strip and the landscaped area referred to previously, and continues eastwards behind a building within the gated area. The subject building can be accessed from within the adjoining building (i.e. the building within the gated area) but this access appears to be of recent origin.
- 2.5. The subject building has a yard to the west with vehicular access to Prospect Road, and a second vehicular access to Lindsay Grove. Although attached to the subject building, this yard is not included in the registered area.
- 2.6. There is also a vehicular entrance to the subject building in the eastern elevation.
- 2.7. The subject building is a large double volume space. External signage indicates that it was formerly part of a furniture/carpets business. It is a portal frame structure with a corrugated metal roof. It was clean and largely empty on the date of inspection. The basement area is equally extensive but with lower height other than some random items deposited there it was largely empty on the date of inspection.
- 2.8. The building has openings at both levels to the railway line which is in a cutting at this location, and high level windows at ground level to Lindsay Grove. There was nothing to indicate when the building was used as furniture/carpet warehouse.
- 2.9. Other than some water ingress at basement level there was nothing to indicate that the building is in poor condition.
- 2.10. On the date of inspection a small portion of the building at the eastern end of the ground floor area was being used by a few people using photographic equipment.
- 2.11. The stated area of the site is 0.0511 ha.

3.0 Planning Authority Decision

3.1 Planning Authority Notice

- 3.2. The Planning Authority issued a notice dated 28th July 2017 which advised the site owner that the subject site 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, issued in accordance with section 7(3) of the Act, stated that particulars of the

site would be entered on the Vacant Sites Register. The notice was accompanied by a map outlining the site boundary.

3.3. Register of Vacant Sites Report

3.4. The report on which the notice was based notes that the site is zoned Objective Z3 'to provide for and improve neighbourhood facilities'. It states that ownership of the site is unknown, that there is no record of any planning permission, that there is no record of enforcement and that having regard to the above and to the criteria set out in section 5 of the Act the site should be included on the VSR.

3.5. A copy of e-mail correspondence submitted, relates to the registration between Dublin City Council and mark@reallybold.com and refers to dates of delivery of notification of notice of entry.

4.0 Development Plan Policy

4.1. Land Use Zoning

4.2. The site is zoned Objective Z3 under the Dublin City Development Plan, 2016-2022. The stated objective is 'to provide for and improve neighbourhood facilities'.

4.3. The vision for the Z3 zone 'Neighbourhood Centres' is that they provide local facilities such as small convenience shops, hairdressers, hardware etc. within a residential neighbourhood. They provide an essential and sustainable amenity for residential areas and it is important that they should be maintained and strengthened, where necessary. They may include an element of housing, particularly at higher densities, and above ground floor level.

4.4. 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.

4.5. 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

- 4.6. Section 14.9 of the DCC development plan states that the VSL will apply to lands zoned Z1, Z2, Z3, Z4, Z5, Z6, Z7, Z8, Z10, Z12 and Z14.
- 4.7. 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.
- 4.8. 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.

5.0 The Appeal

5.1. Grounds of Appeal

5.2. OBH Partners, Corporate Law firm have submitted the appeal against the registration, on behalf of the first party Otimo Capital Limited. The following is a summary of the main points raised in the appeal submitted by the appellant:

- OBH Partners have recently moved offices (to 17 Pembroke Street Upper, Dublin 2). The notice issued by the Planning Authority was issued to the wrong address. It was sent to the Company at 27 Hatch Street Lower, rather than c/o McEvoy Partners, 27 Hatch Street Lower. The first party did not receive any communication prior to 28th July, he was then on annual leave and on his return from leave he instructed OBH Partners to appeal the registration.
- They refer to various matters regarding the use of all the lands contained in Folio 202845F County Dublin, (the property).
- The area referred to in the notice constitutes only part of the lands owned. The entire property should be assessed. A copy of the land registry folio for 202845F County Dublin is attached to the grounds. The map indicates that the property extends as a linear strip from Prospect Rd eastwards well beyond the subject site.
- The property was acquired in August 2015.
- When it was purchased it was in an extreme state of dilapidation, with existing tenants occupying a portion of the folio. Remediation works could not begin until they achieved at least a partial vacancy from the occupying tenants.
- Rates have been paid since he became owner.
- The property has been listed on the rental market by agents Donal O’Buachalla for the last 18 months. There are 3 prospective tenants in advanced negotiations. He will continue to market the unoccupied portions of the property to suitable tenants.

- Extensive remediation and renovation work could only begin in February after one tenant's lease expired and vacated that portion of the property and another tenant agreed to be partially relocated to facilitate works.
- The client has retained RKD Commercial Architects as consultants on the required works.
- The client's investment in the property is in excess of €450,000 since acquisition and further investment is intended during the coming months.
- Three new tenants should commence in November.
- The works undertaken by the first party include but are not limited to, repair of roofing, renovation of windows, wiring, upgrading of insulation, replacement of fire alarms, upgrading of sanitation facilities, CAT 6a cabling, landscaping (2 lawns, trees and hedging), electronic access and CCTV, and upgrading of DAC (Disability Access Certificate) requirements.
- Should it be necessary the first party can provide testimonials from future tenants.
- He will continue to make significant investment in the property.

5.3. **Planning Authority Response**

5.4. The planning authority have responded to the grounds of appeal stating that it is welcomed and noted that the owner of the property has renovated the structure on site in the past year and it is considered positive that new tenants will be taking over the premises in November.

5.5. As efforts have been made to renovate and remediate the building on site in the past year and to find active uses for the site, the planning authority would consider it appropriate to remove the premises from the VSR and revisit the property in December 2017 to ascertain whether the site is occupied and in active use.

6.0 **Assessment**

6.1. By reference to the Planning Authority notice, it is noted that the site comprises regeneration land for the purposes of the Vacant Site Levy.

- 6.2. With regard to the procedural issues raised by the appellant in this case, the notice of entry on the register has been issued and what is provided for under s.9 of the Act is for an appeal against the determination by the Council that a site was vacant or idle for the 12 month period prior to the issuing of the notice. The issues raised by the third party regarding notifications issued by the council are therefore in my opinion a private issue between the Council and the appellants.
- 6.3. The basic case made by the appellants is that the registered site is only part of a property, acquired by the owner in 2015 that the site is currently in the process of being developed, that significant amount of money has already been spent on upgrading the property and that the owner is actively seeking tenants.
- 6.4. The site was clean and tidy on the date of inspection and had recently been painted. It was unclear how much refurbishment work had been carried out.
- 6.5. The folio details provided show that the site changed hands in 2014 to an individual and in 2016 to a company. No information has been provided as to when former use/uses ceased.
- 6.6. As set out at s.9(2) of the Act, the burden of proof that a site or a majority of a site was not vacant rests with the owner of the site. In this case, based on an inspection of the site and the indications of a previous commercial use of the site, I do not consider that the appellants have clearly demonstrated that the site was not vacant for the period of twelve months preceeding its entry on the register of vacant sites.
- 6.7. I note the Councils intention, as stated in their response to the grounds of appeal, to have it removed from the register. That is a matter for the planning authority.
- 6.8. There was an opportunity for the first party to respond, indicating the steps being made or to be made to ensure that the site would not remain vacant, when the planning authority gave written notice of the proposed entry on the register (S7 of the Act). There is a further opportunity under Section 10 (1) of the Act for the first party to notify the planning authority if and when the site is no longer vacant. It is my opinion on the basis of the information presented and an inspection of the site that the site the subject of this appeal remains largely vacant and that there is no clear evidence that the site was not vacant for the 12 month period prior to the date of entry on the register.

6.9. In conclusion, based on the information contained on file and my inspection of the site I am satisfied that no information has been submitted by the site owner to refute the findings of Dublin City Council that the site has been vacant and idle in the 12 months preceding the date of entry of the site on the register. I am therefore satisfied that the majority of the overall site as identified is vacant or idle and that the requirements of s.5(1)(a)(iii) and s5(1)(b)(i) of the Urban Regeneration and Housing Act, 2015 are met in this case.

7.0 Recommendation

7.1. I recommend that the Board should determine that the majority of the site located to the rear of Nos. 21 and 22 Prospect Road, Dublin 9 was vacant or idle for the duration of the 12 months preceding the date of entry on the Vacant Sites Register on 28th July 2017. Therefore, the entry of the site on the vacant Sites 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 majority of the site was vacant or idle for the relevant period.

Planning Inspector

27th November 2017

Appendices

- 1 Photographs
- 2 Extracts from Dublin City Development Plan 2016-2022