



An  
Bord  
Pleanála

## Inspector's Report ABP-306273-19

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<b>Type of Appeal</b>	Section 9 Appeal against Section 7(3) Notice
<b>Location</b>	Weavers Row, Clonsilla, Dublin 15
<b>Planning Authority</b>	Fingal County Council
<b>Planning Authority VSL Reg. Ref.</b>	VS0124
<b>Site Owner</b>	Anne O' Neil
<b>Planning Authority Decision</b>	Place on Register
<b>Date of Site Visit</b>	15th March 2020
<b>Inspector</b>	Erika Casey

## 1.0 Introduction

- 1.1. This appeal refers to a Section 7(3) Notice issued by Laois County Council, stating their intention to enter a site referred to as Weavers Row, Clonsilla Road, Dublin 15 onto the Vacant Sites Register (VSR) in accordance with the provisions of Section 6(2) of the Urban Regeneration and Housing Act 2015. The Notice states that the Planning Authority is of the opinion that the site is a vacant site within the meaning set out in Sections 5(1)(b) of the URH Act 2015.
- 1.2. The appeal site registered under VSL reference VS 0124, has one registered owner, Ms. Anne O' Neill.

## 2.0 Site Location and Description

- 2.1 The subject site has an area of c. 0.75 ha is located in an area known as Weavers Row on the Clonsilla Road. The site is located adjacent to the Church of Jesus Christ of Latter Day Saints. To the east, is a larger parcel of undeveloped brownfield land. Development in the vicinity is primarily low density and suburban housing.
- 2.2 The site itself is clearly visible from the public road. It accommodates a derelict single storey cottage. The fenestration on the dwelling is blocked up and the roof is in poor condition. The site is generally overgrown, unkempt and has a neglected appearance.
- 2.3 There is a low block wall and c. 2m high mesh fence running along the northern boundary with the Clonsilla Road. There is a locked mesh gate to the western part of the site restricting access. There is a further galvanised gate on the western boundary.

## 3.0 Statutory Context

### 3.1. URH ACT

- 3.1.1. The Notice issued under Section 7(3) of the Act states that the PA is of the opinion that the site referenced is a vacant site within the meaning of Section 5(1)(b) of the

Act. The Notice is dated the 3<sup>rd</sup> of December 2019.

3.1.2. Prior to this, a Notice of Proposed Entry was issued to the landowner on the 24<sup>th</sup> of September 2019. This was accompanied by a Planning Report and map outlining the extent of the site to which the Notice relates.

3.1.3. Section 5(1)(b) of the Act stated that a site is a vacant site if, in the case of a site consisting of 'regeneration' land:-

- (i) The site, or the majority of the site, is vacant or idle, and
- (ii) 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 2000) in the area in which the site is situated or has adverse effects on the character of the area.

3.1.4 With regard to adverse effects, Section 6(6) of the Act sets out a number of criteria including:

- (a) land or structure in the area were, or are, in a ruinous or neglected condition;
- (b) antisocial behaviour was or is taking place in the area;
- (c) there has been a reduction in the number of habitable houses, or the number of people living in the area;
- (d) and whether or not these matters were affected by the existence of such vacant or idle land.

3.1.4 The Act defines regeneration land at Section 3 as follows:

*“regeneration land means land identified by a Planning Authority in its development plan or local area plan, after the coming onto operation of section 28, in accordance with section 10(2)(h) of the Act of 2000 with the objective of development and renewal of areas in need of regeneration, and includes any structure on such land.”*

### 3.2. Development Plan Policy

3.2.1 The Fingal County Development Plan 2017 – 2023 is the operative development plan. The site is zoned TC: Town and District Centre. The objective of this zoning is:

*“Protect and enhance the special physical and social character of town and district centres and provide and/or improve urban facilities.*

3.2.3 The vision for this zoning is:

*“Maintain and build on the accessibility, vitality and viability of the existing Urban Centres in the County. Develop and consolidate these Centres with an appropriate mix of commercial, recreational, cultural, leisure and residential uses, and to enhance and develop the urban fabric of these Centres in accordance with the principles of urban design, conservation and sustainable development. Retail provision will be in accordance with the County Retail Strategy, enhance and develop the existing urban fabric, emphasise urban conservation, and ensure priority for public transport, pedestrians and cyclists while minimising the impact of private car based traffic. In order to deliver this vision and to provide a framework for sustainable development, Urban Centre Strategies will be prepared for centres in accordance with the Urban Fingal Chapter objectives.”*

3.2.4 Chapter 3 of the Development Plan sets out the Council’s objective in relation to Vacant Sites. Relevant objectives include:

**Objective PM24** - *Identify and secure the redevelopment and regeneration of areas in need of renewal.*

**Objective PM25** - *Implement the Vacant Sites Levy for all vacant development sites in the County and prepare and make available a Register of Vacant Sites, as per the requirements of the Urban Regeneration and Housing Act 2015.*

3.2.5 It is stated under section 11.7 of the Plan:

*“The following zoned lands are included as lands with the objective of development and renewal of areas in need of regeneration:*

*LC & TC mixed use zonings as they offer great potential for the significant supply of housing and employment space, as set out in their Zoning Objectives. Furthermore, the local and*

*town centre zoned lands are included given their critical role for sustainable neighbourhoods and wider communities.”*

3.2.6 Clonsilla is identified as a Consolidation Area Within Gateway within the Metropolitan Area.

3.2.7 Clonsilla is identified as a local centre with a limited number of retail and other commercial activities. It is stated that there are important pockets of undeveloped lands within the village which can provide opportunities for consolidation of the existing dispersed linear character of the village and realise the potential of the Royal Canal as a valuable amenity. There are a number of policies including:

**Objective Clonsilla 1:** *Prepare an Urban Framework Plan to guide and inform future development; and to include measures to improve and promote the public realm of the village, in addition to traffic calming measures along the main street from St Mary’s Church of Ireland to St. Mochta’s National School.*

**Objective Clonsilla 2:** *Develop key sites within the village for mixed use including a residential component to enhance the viability and vitality of the village while ensuring new developments do not exceed three storeys.*

**Clonsilla Urban Centre Strategy 2008**

3.2.8 The purpose of this Strategy Document is to create a realistic vision for the centre of the village, drawing on the support of all interested parties to produce a tangible programme of actions to enhance the vitality and viability of the village. Key development sites were identified and sketch briefs prepared and key public space objectives were set out.

3.2.9 Map 3 shows the area within ‘Opportunity Site 3’. It is shown as part of a larger site area combined with the adjoining site to the east. The plan states:

*“Area No. 3 - This is the largest landbank and includes those lands to the East of the Mormon Meeting Hall. These lands are in two ownerships which may be combined to facilitate an integrated mixed use development of retail, general business use, restaurants, crèche, underground parking, pedestrian links to Canal and new civic space. The area presents the best development opportunity and is the appropriate location to integrate and consolidate the village core, thereby enhancing and protecting the character of the village.”*

## 4.0 Planning History

4.1 No recent planning history on the subject site.

### Adjacent Lands

4.2 There have been a number of applications on the adjoining site to the east:

**F06A/00378/ABP Ref. PL06F.217020:** Permission refused by the Board in August 2006 for a mixed use retail and residential development.

**F07A/1075 ABP Ref. PL06F.226486:** Permission refused by the Board in September 2008 for a mixed use residential and retail development.

**FW14A/0144/ABP Ref. PL06F.245446:** Permission refused by the Board in January 2016 for a mixed use retail and residential scheme. The reason for refusal stated:

*“It is an objective in the current Fingal County Development Plan 2011-2017 to implement the Urban Centre Strategy for Clonsilla. The site of the proposed development forms a significant portion of undeveloped lands within the Urban Centre Strategy which are identified as Opportunity Area number 3. The Strategy recognises that this area presents the best development opportunity and is the appropriate location to integrate and consolidate the village core thereby enhancing and protecting the character of the village. The proposed development, by reason of lack of integration with adjoining areas would result in a disorderly form of development on this important site within the village and would set a precedent for similar non-integrated development in this centrally located site and would, therefore, fail to comply with the policies and objectives set out in the Urban Centre Strategy for Clonsilla and the current Fingal County Development Plan. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.”*

**FW19A/0112/ABP 305478-19:** Permission refused by the Board in February 2019 for a mixed use retail and residential scheme. The reason for refusal was as follows:

*“The site of the proposed development forms part of a key site within the village of Clonsilla for mixed use development, with the land use zoning objective “TC” Town and District Centre. It also forms a significant portion of undeveloped lands within the Clonsilla Urban Centre Strategy 2008 identified as “Opportunity Area number 3”. The Strategy identifies this area for an integrated mixed-use development of retail, general business use, restaurants, crèche, underground parking, pedestrian links to Canal and new civic space, and notes that it presents the best development opportunity and is the appropriate location to integrate and consolidate the village core, thereby enhancing and protecting the character of the village. The proposed development, by reason of its poor design and layout, including distribution and usability of open space, roads layout, dominance of surface car parking, lack of set down area for the proposed crèche, minimal landscaping and lack of permeability with adjoining areas, would result in a substandard, un-coordinated form of development on this central site in the village core. It would seriously injure the residential amenity of future occupants, would set an undesirable precedent for similar non-integrated forms of development in the area, and would, therefore, fail to comply with the policies and objectives set out in the Fingal County Development Plan 2017-2023, the Design Manual for Urban Roads and Streets issued by the Government of Ireland in May 2019, and Clonsilla Urban Centre Strategy 2008. It is considered that the proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.”*

## **5.0 Planning Authority Decision**

### **5.1. Planning Authority Reports**

5.1.1 A Vacant Site Report (03.12.2019) was prepared for the site outlining the dates of the visits to the site, description of the area, zoning, planning history and the type of site for the purposes of the Act which in this case is Regeneration. The following key points are noted:

- Site visits were undertaken on 05.04.2019 and 23.09.19.
- The site is clearly vacant, idle and void of any active use. It is not being used for the purposes of its zoning.

- No development has commenced on site.
- It is not listed on the Derelict Site Register.
- The site is not part of a person's home. It is not in community use. It is not being used for any temporary purpose. The site has not been identified for any capital works.

5.1.2 In terms of criteria set out in section 5(1) (b) it is detailed that:

- The lands are vacant and idle. It is stated that it has been a vacant site for the duration of the 12 months preceding the report. Supporting evidence of this includes:
  - Site inspection photographs dated 17.04.19 and 30.08.2019.
  - Bluesky Orthos aerial photographic survey on behalf of Fingal County Council dated 27.06.2018.
  - Google Street view images from May 2009, September 2009, April 2017 and April 2019.
  - Planning Authority's knowledge and familiarity with this site due to the planning history of adjoining lands.
- The site is in a neglected condition. The structure on the site is clearly not habitable and is poorly maintained. The opes in the front elevation of the structure are blocked up. There is damage to the tiled/slatted roof as a consequence of neglect. The structure and site are clearly overgrown with vegetation and in an unkempt condition particularly from the roadside boundary. Access to the site is restricted by unsightly green mesh style fencing and padlocked access gates. The site is clearly vacant and idle.
- There is evidence of antisocial behaviour. Graffiti was present on the galvanised gate.
- There are a number of existing dwellings on Weavers Row that appear to have a similar footprint and building line to the structure on the site. It could be argued as the site is vacant that there is a reduction in one habitable house.
- The report concludes that the site is visually prominent and is a strategically important site. It has adverse effects in terms of visual amenity in an



established urban setting and streetscape.

5.1.4 A further Planning Report (03.12.2019) was prepared in response to a submission received opposing the proposed entry onto the VSL register. This noted

- The submission has not demonstrated that the site is not vacant and has not been vacant, for the duration of the preceding 12 months. In this regard, it is considered the site remains within the criteria of a 'regeneration site' as per the Vacant Site Report 1.
- Notwithstanding the planning history of the adjoining Aldi site and the fact that the site appears to be for sale, it is considered that if FCC decides not to enter the site on the register, there remains a risk that the site may not be developed in the foreseeable future. It recommended that the lands should be included on the Vacant Sites Register.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1 An appeal was received from Anne O' Neill on the 17<sup>th</sup> of December 2019 which can be summarised as follows:

- That she is not a property speculator. The lands were acquired in the 1970's. It was formerly used for a road haulage business.
- The site went on the market in 2018. No meaningful offers have been made on the site. The property sales agent (Lisney) has advised that sale of the land is dependent on the adjoining Aldi site obtaining planning permission in line with the desire of the local authority to see a comprehensive masterplan redevelopment incorporating the subject site and the Aldi site, as well as providing linkages to other sites.
- Lisney have advised that the site is premature for development given its situation, physical layout and through its inclusion in a masterplanning concept by Fingal Co. Co.
- The most recent planning application by Aldi is on appeal which has had the

knock on effect of collapsing interest in the subject site. Have been advised that it would not be appropriate to sell the site subject to planning permission or joint venture basis subject to planning permission.

- Accept that the property is vacant but does not accept that it has an adverse effect on existing amenities or that it reduces the amenity provided by existing public infrastructure facilities in the area in which the site is situated or that it has adverse effects on the character of the area.
- The site is fenced and is not unattractive. The long derelict cottage is properly secured.
- The property is not capable of being developed in its own right. This inability to develop is proven by the decision to reject the Aldi proposal to redevelop the adjoining lands. If the site was capable of redevelopment, it would have been sold.
- It is premature of FCC to place the property on the VSR as it is not capable of achieving a planning grant at present. The achievement of a planning grant is outside the appellants control and is reliant on Aldi.
- Consider that they are an innocent party and have been fully cooperative in respect of trying to reach an agreement with the adjoining owners. State that inclusion on the register should be deferred. Consider the levy is an unjust tax.

## **6.2. Planning Authority Response (27.01.2020)**

6.2.1 The points raised in the submission are the same as those raised in a previous submission (14.10.2019) which were considered by the PA in Vacant Site Report 2 on the 03.12.2019. As such, there are no further comments from the PA.

## **7.0 Assessment**

### **7.1. Introduction**

7.1.1. This Notice has been issued under the provisions of Section 5(1)(b) of the Act which relates to 'regeneration lands'.

7.1.2. Section 5(1)(b) of the Act states that a site is a vacant site if, in the case of a site consisting of 'regeneration' land:-

1. The site, or the majority of the site, is vacant or idle, and
2. 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 2000) in the area in which the site is situated or has adverse effects on the character of the area.

With regard to adverse effects, Section 6(6) of the Act sets out a number of criteria including:

- (a) land or structure in the area were, or are, in a ruinous or neglected condition;
- (b) antisocial behaviour was or is taking place in the area;
- (c) there has been a reduction in the number of habitable houses, or the number of people living in the area;
- (d) and whether or not these matters were affected by the existence of such vacant or idle land.

7.1.3 I will consider each of these provisions in turn.

**The site, or the majority of the site, is vacant or idle**

7.1.4 I would note that the appellants do not question that the site is vacant or idle.

Notwithstanding this, the Board must consider if it has been demonstrated by the PA that the site has been vacant for a period of 12 months.

7.1.5 The 2015 Act (as amended) requires the Board on appeal to look at the past condition of the site and determine if the site was vacant or idle, section 9 states.

*(2) On an appeal under this section the burden of showing that the site was not a vacant site for the duration of the 12 months concerned is on the owner of the site.*

*(3) Where the Board determines that a site was not a vacant site 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 in accordance with section 6 (2) it shall give written notice to the planning authority who shall cancel the entry on the register in respect of that site.*

- 7.1.6 The relevant time period for this appeal extends 12 months back from the date on which the site was entered on the register, in this instance the 3<sup>rd</sup> of December 2019. I note that the Planning Authority have stated that the site has been vacant for the duration of 12 months. Vacant Site Report 1 (03.12.2019) notes that 2 site visits were undertaken on the 05.04.2019 and on the 23.09.19. Both of these visits were less than 12 months before the entry was made. It is further detailed in section 31 of the report that supporting evidence that the site was a vacant site for the duration of the 12 months preceding are: site inspection photographs dated the 17.04.19 and 30.08.19. However, only one set of site photos are appended to the report which are dated the 23.09.2019. Notwithstanding the variance in dates submitted with respect to the site visits undertaken and date corresponding to site photographs, none of the visits were more than 12 months preceding the entry of the site to the register.
- 7.1.7 The Planning Authority have also utilised Google Street view imagery and aerial photography undertaken in June 2018 (by Bluesky Orthos on behalf of FCC) as further evidence that the site is a vacant site. As Google Street View is undertaken by a third party, I am of the view that it cannot be relied on for the purposes of confirming that the site is a vacant site. Whilst, the aerial photography is noted, this in my view, does not supplant the need to undertake a site visit to confirm the vacancy of the site.
- 7.1.8 The Planning Authority cannot categorically state that, in respect of the definition of vacant or idle in section 5(1)(a)(iii) of the Act, that the site was vacant and idle on the 3<sup>rd</sup> of December 2018 which would comprise the commencement of the 12-month period.
- 7.1.9. The relevant time period is a very important factor and one upon which the 2015 Act is quite clear in its interpretation, section 6(2) states as follows:
- “A planning authority shall enter on the register a description, including a map, of any site in its functional area which was, in the opinion of the planning authority, a vacant site for the duration of the 12 months preceding the date of entry.”*
- 7.1.10 The Planning Authority should provide a clear chronological record to confirm site visits and provide a definitive assessment of the duration of twelve months, i.e. when the site was first visited and when most recently visited in relation to placement on the register. In this instance, the Planning Authority have not fully accounted for the

duration of the twelve month period and the site visits were undertaken less than 12 months prior to the entry of the site on the register.

7.1.11 From my observations of the site and the details from the planning history of the adjoining site, it is highly probable that the site has been in the same or similar condition for some time. In this regard, it is most likely that the lands have been and continue to be vacant. However, it is not clear from the information presented by the Planning Authority that the relevant time period has elapsed. It is incumbent on any Planning Authority to have details of inspections which can clearly indicate that in their opinion the site was vacant or idle for the 12 months preceding placing the site on the Register. It is not sufficient to assume so.

7.1.12 Even though it is likely and probable that the lands have been vacant, in the absence of adequate documentary evidence, this is not certain. I, therefore, recommend that the Notice issued should be cancelled and the site should be removed from the register. This does not preclude the Planning Authority from recommencing the process and implementing the 2015 Act in terms of allowing the relevant 12 month time period to elapse.

**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 2000) in the area in which the site is situated or has adverse effects on the character of the area**

**Land or structure in the area were, or are, in a ruinous or neglected condition**

7.1.4 The site accommodates an obsolete structure comprising the remains of a bungalow. The dwelling is in poor condition. During the site visit, it was noted that the existing structure has a very dilapidated appearance. It has been vacant for some time and this coupled with the generally poor appearance of the site and boundary treatment considerably detracts from the amenities of the area. Notwithstanding the contention of the appellant that the property is maintained, I consider that the site accommodates a structure that is in a neglected and ruinous condition.

**Antisocial behaviour was or is taking place in the area**

7.1.8 It is detailed in the Planner's Report accompanying the Notice of Proposed Entry to the Vacant Site Register that there is evidence of antisocial behaviour on the site with graffiti evident. This graffiti was evident during the site visit. I am satisfied that

there is evidence of antisocial behaviour taking place on the site and that the neglected and vacant condition of the subject lands contribute to this.

**There has been a reduction in the number of habitable houses, or the number of people living in the area**

7.1.11 There is no particular evidence to suggest that as a result of the vacant site that there has been a reduction in the number of habitable houses, or the number of people living in the area.

**Conclusion**

7.1.12 In conclusion, I consider that 2 of the tests in Section 6(6) are met and that site has an adverse effect on existing amenities and has been subject to anti-social behaviour and thus can be categorised as a vacant site as defined by Section 5(1)(b). I am satisfied that the neglected and derelict condition of these vacant lands has an adverse effect on existing amenities and reduces the amenity provided by existing public infrastructure and facilities (within the meaning of Section 48 of the Act 2000) in the area in which the site is situated, particularly due to the strategic location of the lands in the centre of Clonsilla village and its proximity to physical and social infrastructure. The site has an adverse effect on the character of the area.

**Other Issues**

7.1.13 The appellants main ground of appeal is that the vacant site levy is not applicable and is premature due to the fact that Aldi are seeking planning permission on the adjacent lands and that the development of the subject site is dependent on a successful permission being permitted on these lands. I do not concur the planning status of the adjacent lands is a barrier to the development of the subject lands either in their own right or as part of a master planned approach with the adjacent lands. Furthermore, the fact that the site is for sale does not preclude the imposition of the levy.

**8.0 Recommendation**

8.1 I recommend that in accordance with section 9(5) of the Urban Regeneration and Housing Act 2015, the Board should cancel the Notice stating that the lands at Weavers Row, Clonsilla, Dublin 15 was a vacant site for the 12 months concerned.

Therefore, the entry on the Vacant Sites Register on the 3<sup>rd</sup> of December 2019 shall be removed

## **9.0 Reasons and Considerations**

9.1 Having regard to:

- (a) The information placed before the Board by the Planning Authority in relation to the entry of the site on the Vacant Sites Register,
- (b) The grounds of appeal submitted by the appellant,
- (c) The report of the Senior Inspector,
- (d) The recorded date of site inspections, (05/04/2019, 23/09/2019, 17/04/2019 and 30/08/2019) provided by the Planning Authority in its submitted documentation,
- (e) The absence of sufficient evidence to support the contention of the Planning Authority that the site was vacant and idle for the period of 12 months preceding the date of placing the site on the register.

The Board considered that it is appropriate that a notice be issued to the Planning Authority to cancel the entry on the Vacant Sites Register.

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**Erika Casey**  
**Senior Planning Inspector**

**16th March 2020**