



An
Bord
Pleanála

Inspector's Report ABP-300784-18

Type of Appeal	Section 9 Appeal against section 7(3) Notice.
Location	Lands at the South of Station Road, Portmarnock, Co Dublin.
Planning Authority	Fingal County Council.
Planning Authority VSL Reg. Ref.	VS/0022.
Site Owner	St Marnocks II Designated Activity Company.
Date of Site Visit	9 May 2018.
Inspector	Stephen Rhys Thomas.

1.0 Introduction

- 1.1. This appeal refers to a section 7(3) notice issued by Fingal County Council, stating their intention to enter the site at Lands south of Station Road, Portmarnock, County Dublin on the Vacant Sites Register (VSR) in accordance with the provisions of section 6(2) of the Urban Regeneration and Housing Act 2015.

2.0 Site Location and Description

- 2.1. The subject site is located south of Station Road and east of Portmarnock Train Station surface car park. Portmarnock is located north of the outer suburbs of Dublin and comprises a seaside village and separate suburban development around the station. The site fronts onto Station Road and shares a boundary with the station surface car park. The eastern boundary of the site is aligned along a field boundary and the southern boundary is not defined. The western boundary of the site is aligned along The Avenue, an access road from Station Road to St Marnock's Bay a newly constructed housing estate.
- 2.2. The site is relatively flat and accommodates a construction compound associated with the emerging housing development to the south and west. The site has been cleared and topsoil is mounded in groups. A small area to the front of the site at the junction of The Avenue with Station Road has been landscaped. Boundary treatments to the public realm comprise steel mesh fencing and post and rail timber fencing. The site has the appearance of a development site, a low level of construction activity was ongoing.

3.0 Planning Authority Decision

- 3.1. **Planning Authority Notice:** Fingal County Council advised the site owner that the subject site (Planning Authority site ref. VS/0022) had been identified as a vacant site. The notice, issued pursuant to section 7 of the Act and dated 28 December 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 'RA – Residential Area'. The planning history of the site is outlined – the only permission on the site refers to an access road permitted under F13A/0248. No recorded enforcement history. The site is zoned for housing, house and rental prices are detailed, 4,312 applicants on social housing support have detailed Malahide/Howth as their preferred area, the proportion of houses for sale/rent is less than 5%; there is a need for housing. There are foul water constraints in the Portmarnock South LAP lands, however, temporary solutions are acceptable; there is no thing to delay housing development. The site was vacant or idle for the twelve months concerned. The report includes a detailed criteria assessed for suitability for the VSR and detailed responses in relation to the entirety of section 5(1)(a) and section 6(4) and (5) of the 2015 Act. A secondary report was also prepared in relation to the submissions received on foot of the section 7(1) Notice. The Council's report is accompanied by maps, photographs, a housing waiting list assessment by area, a land reference report, an urban house count survey for the area (2016), a monthly rent report (2014-2017) and a 12 month market based household purchase report (2014-2017).

4.0 **Development Plan / Planning History**

4.1. The Fingal County Development Plan 2017 – 2023 is the operative development plan. The site is located on lands that are subject to zoning objective RA – 'Residential Area - Provide for new residential communities subject to the provision of the necessary social and physical infrastructure'. The lands are identified as LAP 9.A and under Objective Portmarnock 7 it is stated - Prepare and/or implement a Local Area Plan for lands at Portmarnock South to provide for strategic development of the area as a planned sustainable mixed use residential development subject to the delivery of the necessary infrastructure. Local Objective 79 - The visual impact on the Greenbelt of this new housing in Portmarnock will be minimised by its siting, design and by planting.

4.2. 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.

4.3. The site is also located within the **Portmarnock South Local Area Plan 2013**, table 11.6 entitled 'Social, Environmental and Physical Infrastructural requirements for each Phase of the Development', sets out the following: Phase 1 – 300 units under water and drainage: Prior to the occupation of any new dwellings on site the applicant shall ensure that the existing pumping stations have been appropriately assessed (including Appropriate Assessment, as applicable) and upgraded to provide for any additional load, which shall in any event not exceed 100 residential units.

The continued use of the existing pumping stations at Portmarnock Bridge and/or Moyne Road shall be considered an interim situation to serve no more than 100 additional dwellings and the applicant/developer shall demonstrate compliance with this in the making of any planning applications for these lands.

Pumping Station and associated outfalls completed and operational following the completion of the first 100 dwellings and prior to the commencement of further development.

The LAP sets out that the Portmarnock South LAP lands are strategically positioned along the DART commuter service and the Dublin-Belfast railway line. The strategic vision of the LAP is to “develop a high quality urban environment with a unique sense of place, maximising and respecting the opportunities presented by the area’s natural assets and coastal location adjoining Baldoyle Bay and recognising its high level of accessibility to Portmarnock train station.”

4.4. **Planning History**

An Bord Pleanála reference **300514**. Permission 150 dwelling units (52 duplex/apartments and 98 houses). March 2018.

PA reference **F13A/0248**. Permission granted in 2014 for 101 residential units immediately west of the subject site. This development is known as St. Marnock’s Bay and is under construction.

PA reference **F07A/0947**. Permission granted for 684 units including a neighbourhood centre in 2007.

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 Fingal County Council to enter the subject site on the Register. The grounds of the appeal can be summarised as follows:

- With reference to section 6(5) of the 2015 Act, the site has been constrained by objectives of the Portmarnock South LAP 2013. The LAP states that development of the site requires a pumping station. In the absence of a pumping station, the site is not suitable for housing. An interim solution has only just been agreed with Irish Water, on foot of a grant of permission for a strategic housing development on the site, ABP-300514-17 refers.
- The Fingal County Development Plan 2017-2023 also outlines objectives that relate to RA zoned lands, including that new residential development should accord with approved LAPs and subject to the provision of necessary physical infrastructure.
- The lands are subject to a detailed phasing and implementation plan set out in section 11 of the LAP. The LAP requires that no more than 100 residential units are occupied until the existing pumping station is assessed and upgraded. The site has therefore not been capable of supporting new residential development. In this context, the adjacent site received permission for 101 houses and these are under construction, F13A/0248 refers; a new pumping station is therefore required.
- Under the permission on the adjacent site (F13A/0248), two temporary attenuation tanks were constructed on this site as an interim solution until the completion of the Regional Wetland which forms part of SHD ABP-300514-17. The regional wetland is located to the south east of the subject site and forms part of a drainage strategy in the LAP. In the absence of a new pumping station for Portmarnock the entry onto the register is unfair and unreasonable.

- The site is well maintained, it is not neglected or the subject of anti-social behaviour.

The appeal is supported by a letter from a consultant engineer that confirms the infrastructural constraints of the site, a timeline for the delivery of a solution (pumping station May 2019) and a capacity review of the existing pumping station to accommodate c.150 houses in anticipation of an SHD application.

5.2. **Planning Authority Response**

None.

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 Fingal County Council VSR on the 28 December 2017.
- 6.2. The subject site is located in an area zoned residential in the current County Development Plan. Chapter 3 sets out the Council's objective in relation to Vacant Sites. 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 3 October 2017 and the site was found to be vacant/idle. 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. In addition, the report addresses the need for housing in the context of Section 6(4) of the 2015 Act and the suitability of the site for the provision of housing in the context of Section 6(5) of the 2015 Act.
- 6.4. The appellant states that the site is not suitable for the delivery or housing for a variety of reasons: that new development should accord with LAP objectives concerning the delivery of infrastructure for the area, and that the phasing constraints of the LAP limits residential development to 100 units until a new

pumping station is in place. In addition, an interim solution has only just been agreed in tandem with permission for a strategic housing development. The subject site accommodates surface water attenuation tanks that facilitate the ongoing development of housing to the west.

- 6.5. In my mind, the principle reasons put forward by the appellant relate to section 5(1)(a)(ii) and how it relates to section 6(5) of the 2015 Act and in some respects section 5(1)(a)(ii) as it relates to the majority of the site being vacant or idle.
- 6.6. Taking section 5(1)(a)(ii) of the 2015 Act first, I note the report of the planning authority. For the twelve months concerned the planning authority stated that the majority of the site was not in use, but that a portion of the site was in use as a car park/construction compound for the construction works ongoing on the adjacent site to the west. This accords for the most part, with my observations on the date of my site visit. However, it did appear to me that site clearance and trench work was being carried out across much of the site and that recent activity was concentrated to the north east of the site. In addition, the use of the site for temporary attenuation tanks and site compound cannot in my opinion provide a significant use to lift the site from vacant or idle to beneficial use. In terms of the findings of the planning authority and the meaning of the 2015 Act, I would agree that the site was idle for the period concerned.
- 6.7. In relation to the condition of the site and lack of anti-social behaviour, this is a requirement for regeneration lands, not residential lands and so has no bearing on the appeal
- 6.8. The substantive matter that is the subject of the appeal is whether or not the site was suitable for the provision of housing in the context of section 5(1)(a)(ii) and section 6(5) of the 2015 Act. The Board should note that all of the components of these sections must be in play for a site to be considered a vacant site.
- 6.9. Section 6(5) states that:

A planning authority, or the Board on appeal, shall determine whether or not a site was suitable for the provision of housing for the purposes of this Part by reference to—

(a) the core strategy,

(b) whether the site was served by the public infrastructure and facilities (within the meaning of section 48 of the Act of 2000) necessary to enable housing to be provided and serviced, and

(c) whether there was any thing affecting the physical condition of the land comprising the site which might affect the provision of housing.

6.10. Firstly, the planning authority state that the site is zoned for residential purposes and meets core strategy requirements of the Development Plan. In addition, there are foul water constraints in the area but interim solutions are possible to facilitate development and nothing affects the physical condition of the lands to restrict development. Therefore, in the mind of the planning authority all parts of section 6(5) are met.

6.11. The appellant contends that the LAP placed phasing constraints in the way of development until a new pumping station is provided. Specifically, I note that table 11.6 of the LAP states that no more than 100 houses shall be occupied until the existing pumping station has been upgraded. For this reason, the appellant claims, any attempts to develop the site have not been initiated.

6.12. In my mind, the crux of the matter is whether the site was served by public infrastructure necessary to enable housing to be provided and serviced. In this respect, I note that there is conflicting advice from the planning authority. On the one hand, LAP phasing advice places a stop on development until a pumping station and associated outfalls are completed and operational prior to the commencement of further development within phase 1. On the other hand, the planning authority's Vacant Site Report states that temporary solutions are considered suitable to facilitate the development of the subject lands. In any case, the appellant claims that LAP objectives and constraints have prevented them from developing the site.

6.13. This might be a worthwhile consideration if there was a refusal of permission on account of a lack of suitable infrastructure; there is not. Or if permission was secured subject to conditions limiting development to staged phases in tandem with infrastructure delivery, there is not. According to the information I have, no planning permission had been applied for on the subject lands until the recent permission for 150 dwelling units under SHD ABP-300514-17 in March 2018. The Board had no hesitation in granting permission because, the planning authority and Irish Water

raised no issues either in terms of phasing constraints or lack of suitable infrastructure.

- 6.14. On balance, it appears that the site was and is served by public infrastructure to enable housing development as evidenced by a recent grant of permission despite the absence of any new or planned pumping station. I find the advice provided by the LAP phasing strategy to be aspirational and cautionary, but it does not in itself prevent development being applied for. I am not satisfied that a phasing strategy in an LAP can be relied upon to deem lands unsuitable for residential development. It should be noted that the LAP places the subject site in Growth Area - 1 Phase 1 which envisages sequential short-medium term growth of 600 units up to 2019 together with the delivery of key infrastructure.
- 6.15. The site should be considered vacant or idle for the relevant period concerned. However, permission has recently been granted for 150 residential units and I note that preparatory works may be under way. The Board may wish to note that under section 10 of the 2015 Act, the obligation to notify the planning authority of any changes in the status of the site is on the owner, 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.

Consequently, it is in the owner's power to provide suitable evidence to satisfy the planning authority that the site is no longer vacant or idle and cancel the entry of the site on the register. Should the Board decide to confirm the entry of the site on the register as per my recommendation, it may be appropriate to advise the appellant of their obligations under section 10 of the 2015 Act. This information could be conveyed to the appellant by way of a note attached to the Board's Direction that references section 10 of the 2015 Act in full.

- 6.16. 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 a current planning permission and the residential land use zoning. Given the foregoing,

I conclude that the majority of the site was vacant or idle in accordance with section 5(1), 6(4) and (6)(5) of the 2015 Act. I am satisfied that the entry of the subject site on the Vacant Sites Register of Fingal County 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 Lands south of Station Road, Portmarnock, Co Dublin, was vacant or idle for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 28 December 2017 shall be deemed to take effect from that date.

8.0 Reasons and Considerations

8.1. 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 Planning Inspector and
- (d) That there is a need for housing in the area, the site is suitable for the provision of housing as demonstrated by the phasing strategy of the Portmarnock South Local Area Plan 2013 and recent permission for a strategic housing development of 150 units, and that insufficient reason is put forward to cancel entry on the Vacant Sites Register

the Board is satisfied that the site was vacant or idle for the relevant period.

Stephen Rhys Thomas
Planning Inspector

28 May 2018