



An
Bord
Pleanála

Inspector's Report ABP-300792-18

Type of Appeal	Section 9 Appeal against section 7(3) Notice.
Location	Lands to the northwest of Tyrrelstown Public Park, Townland of Kilmartin, Dublin 15.
Planning Authority	Fingal County Council.
Planning Authority VSL Reg. Ref.	VS/0018.
Site Owner	Tom O'Brien.
Date of Site Visit	23 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 to the northwest of Tyrrelstown Public Park, Townland of Kilmartin, Dublin 15 on to 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 north of Mulhuddart in the emerging Tyrrelstown/Kilmartin area of Dublin 15. The site is positioned north west of a large area of public parkland, Tyrrelstown Park. Agricultural fields are located to the north and west of the site.
- 2.2. The subject lands are not accessible from a public road. The site is mostly level and comprises rough scrubland with immature trees and shrubs.

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/0018) 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'. There is no planning history associated with the site. No recorded enforcement history. The site is zoned for housing, house and rental prices are detailed, 4,807 applicants on social housing support have detailed Blanchardstown as their preferred area, the proportion of houses for sale/rent is less than 5%; there is a need for housing. The connection of services will be required through other land in the ownership of the landowner. There are no constraints in the Kilmartin LAP to preclude 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, despite Council receipt of the submission after the closing date. The Council's report is accompanied by maps, photographs, folio map, a housing waiting list assessment by area, 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 12.B and under Objective Blanchardstown 18 it is stated - Prepare and/or implement the following Local Area Plans and Masterplans during the lifetime of this Plan – Kilmartin LAP.
- 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 **Kilmartin Local Area Plan 2013**, section 6 of the plan sets out phasing and implementation guidance. The site is subject to Phase 3 of the LAP phasing strategy.
- 4.4. The provision of infrastructure and services in a timely manner is crucial to the achievement of the vision for Kilmartin. The LAP area is divided into 2 separate Development Phasing Areas, with one located east of the R121 on the RA lands containing 2 Phases and one located west of the R121 on RA lands containing 3

Phases. The sequence of phasing is ordered so that development moves from the centre out. Phase 2 West cannot commence until 75% of Phase 1 West has been completed to the satisfaction of the Planning Authority. In addition Phase 2 East cannot commence until 75% of Phase 1 East has been completed to the satisfaction of the Planning Authority. The phasing arrangements on either side of the R121 are not linked i.e. Phase 2 East can commence prior to Phase 1 West being completed subject to Phase 1 East being developed to the satisfaction of the Planning Authority. The 'LC zoning' is to proceed over the course of Phase 1 and 2 and is to be substantially complete prior to Phase 3 commencing.

4.5. **Planning History**

Subject site:.

I note reference on file to a refusal of permission in 1994, documents not available.

Nearby sites:

An Bord Pleanála reference **PL06F.243395**. 177 dwellings with a new link road to the east of Tyrrelstown Educate Together School. October 2014.

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:

- The subject site is part of a larger landholding in the area, that are subject to separate Vacant Site reference numbers, VS/0015, VS/0016 and VS/0017; all are within the Kilmartin Local Area Plan. The principle aim of the LAP is to provide new residential communities in tandem with the provision of the necessary social and physical infrastructure. The appeal lands are located in Phase 3 of the LAP and are subject to the following constraints:

Phase 2 West (of the R121) cannot commence until 75% of Phase 1 West has been completed to the satisfaction of the Planning Authority.

Development of the subject lands in 3 cannot commence, in any case 75% of Phase 1 must be complete before other development. Phase 3 development is therefore prevented from commencing.

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 of the plan sets out the Council's objective in relation to Vacant Sites. The site is considered residential lands for the purposes of the 2015 Act. The Board should note that there are two other current appeals on lands either in the vicinity or adjacent to this site, ABP reference 300786-18 and 300789-18 refer.
- 6.3. The Council's planning report states that a site visit was undertaken on the 23 October 2017 and the site was found to be vacant/idle. Colour photographs detail the appearance and condition of the site. 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 has not been developed because of the phasing strategy contained in the Kilmartin LAP. In addition, development on the site cannot commence until earlier phases of development have been completed to the east.

- 6.5. In the context of the 2015 Act, the appellant's view is that the phasing strategy of the Kilmartin LAP has rendered the site unsuitable for housing. This is because the majority of the appeal site is located in an area subject to Phase 3 development that can only proceed after 75% of Phase 1 lands have been completed to the satisfaction of the planning authority.
- 6.6. The substantive matter 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 the components of these sections must be in play for a site to be considered a vacant site.
- 6.7. 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.

- 6.8. Firstly, the planning authority state that the site is zoned for residential purposes and meets core strategy requirements of the Development Plan. In addition, the planning authority identifies that the site requires connection to services via other lands, however, these are in the ownership of the appellant and are not an obstacle to development. 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) and all other relevant sections of the Act are met.
- 6.9. The question is whether the site was served by public infrastructure necessary to enable housing to be provided and serviced. In this respect, I note that the planning authority have not pointed to infrastructural deficiencies in the area so as to limit development. The Kilmartin LAP outlines a phasing strategy however, and the

appeal site falls into a final phase of development. In effect, the appellant claims that LAP phasing has prevented them from developing the site.

- 6.10. This might be a worthwhile consideration if the resolve of the planning authority to strictly apply the phasing requirements of the LAP were tested, by deciding on a planning application, for example. This has not been done and so there is no burden or restriction placed on the lands either by a planning permission or refusal of permission. According to the information I have, no planning permission has been applied for on the subject lands. In addition, the appellant owns a considerable amount of land in the area, detailed by figure 1 of the grounds of appeal. This shows that the appellant has the means of access to a public road at the R121 and can dictate the pace of development in this quarter of the LAP. It should also be noted that the Board granted permission for 177 dwellings and a link road on a nearby site to the east, ABP reference PL06F.243395 refers.
- 6.11. On balance, it appears that the site was and is served by public infrastructure to enable housing development. I find the advice provided by the LAP phasing strategy to be logical and iterative, but it does not in itself prevent development being applied for. In this respect, I note that subsequent phases of development can proceed subject to the satisfaction of the planning authority, and this can only really be achieved through the statutory planning process.
- 6.12. I am not satisfied that a phasing strategy in an LAP can be relied upon to deem lands unsuitable for residential development. The site should be considered vacant or idle for the relevant period concerned. 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 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 to the northwest of Tyrrelstown Public Park, Townland of Kilmartin, Dublin 15, 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 Kilmartin Local Area Plan 2013, 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

30 May 2018