



An
Bord
Pleanála

Inspector's Report ABP-301059-18

Type of Appeal	Section 9 Appeal against section 7(3) Notice
Location	Lands Adjacent to Leopardstown Racecourse, Dublin 18.
Planning Authority	Dun Laoghaire Rathdown County Council
Planning Authority VSL Reg. Ref.	VS-0001
Site Owner	Horse Racing Ireland
Planning Authority Decision	Place on Register
Date of Site Visit	13 September 2018
Inspector	Una Crosse

1.0 Introduction

- 1.1. This appeal refers to a section 7(3) notice issued by Dun Laoghaire Rathdown County Council, stating their intention to enter a site referred to as lands adjacent to Leopardstown Racecourse, Dublin 18 on to 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)(a) and 5(2) of the URH Act 2015
- 1.2. The appeal site registered under VSL reference VS - 0001, has one stated registered owner, Horse Racing Ireland. For the Boards information a separate appeal made by the same appellant relates to lands between Ballyogan Lawn and Holy Trinity school to the north west of the subject site (Ref. ABP-301060-18).

2.0 Site Location and Description

- 2.1. The site to which the notice relates has a stated area of 17.95 hectares and is traversed by the Luas to the south east of the site which creates two parcels of land. The site is adjoined to the northeast by the racetrack and attendant elements and to the southeast by Junction 15 on the M50. An access road from this junction into the racecourse adjoins the north of the site.

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)(a) and 5(2) of the Act. The Notice is dated 26th January 2018 and is accompanied by a map outlining the extent of the site to which the Notice relates.
- 3.1.2. Section 5(1)(a) of the Act stated that a site is a vacant site if, in the case of a site consisting of residential land:-
 - (i) the site is situated in an area in which there is a need for housing,
 - (ii) the site is suitable for housing, and

(iii) the site, or the majority of the site, is vacant or idle.

3.1.3. It is noted that Section 5(1)(a)(iii) has been amended by Section 63 of the Planning and Development (Amendment) Act 2018 which commenced upon coming into effect of the Act (19 July 2018). This section of the Act amends Section 5 of the Act of 2015 by substituting Section 5(1)(a)(iii) for the following:

the site, or the majority of the site is—

(I) vacant or idle, or

(II) being used for a purpose that does not consist solely or primarily of the provision of housing or the development of the site for the purpose of such provision, provided that the most recent purchase of the site occurred—

(A) after it became residential land, and

(B) before, on or after the commencement of *section 63 of the Planning and Development (Amendment) Act 2018*'.

3.2. **Development Plan Policy**

3.2.1. The site is zoned objective A' to protect and/or improve residential amenity in the Dun Laoghaire Rathdown County Development Plan 2016-2022.

4.0 **Planning History**

4.1. **Ref. D02A/0698 (PL06D.201575)**

4.1.1. A 10 year permission was granted on appeal by the Board for development comprising alterations and modifications to the Racecourse including construction of:

1. A 2,112 sq.m replacement stable complex.

2. A 1,532 sq.m track and golf course maintenance depot (workshop and storage areas).

3. A 1,942 sq.m replacement golf clubhouse including 65 no. bay driving range and a 220 no. space car park (including space for 80 no. vehicles for the stable complex).

4. A new 7-furlong sprint racetrack including an access tunnel for golfers, horses and ambulances.

5. A new slip lane vehicular access to the site from the Carrickmines Interchange of the South Eastern Motorway and four lane link road serving the main spectator area and access to the parking area to the south of the Motorway.

6. A new vehicular access across the existing racing track to the Foxrock Gates and reinstatement of track at existing crossing.

7. A new car park located between the motorway and the new sprint track to provide approximately 2,400 no. spaces.

8. A new 11.6 million litre capacity on-site water reservoir.

And alterations to the existing: 1. Internal circulation road network. 2. Golf-course, incorporating a zone for helicopter landing and parking. 3. On-site water reservoir to form a capacity of 4,3 million litres. 4. Foxrock vehicle entrance onto Westminster Road. 5. Parking areas for Racecourse use including surfacing, fencing, gates, landscaping and lighting.

4.1.2. The permission was extended until 22 July 2018 and has now expired.

4.2. **D04A/0730 (PL06D.208894)**

4.2.1. Variations to previously approved plans for alterations and modifications to the Racecourse (Reg. Ref. D02A/0698. An Bord Pleanála Reg. Ref. PL06D.201575) to exclude elements of the permission which are no longer required or are being replaced by new designs including; the approved replacement stable complex and carpark shared with golf centre; the approved track and golf course maintenance depot: 1,000 linear metres of one of the lanes of the approved access road from the Carrickmines interchange; the 7-furlong sprint racetrack including access tunnel; the zone for helicopter landing and parking.

4.2.2. On appeal the Board refused to permit the exclusion of 1,000 linear metres of one of the lanes of the approved access road for reasons of traffic safety.

4.3. **Ref. D05A/0497**

4.3.1. Variations to the previously approved plans for alterations and modifications to the Racecourse (Reg. Ref. D02A/0698); An Bord Pleanála Ref. PL06D.201575) and will consist of alterations to the levels and profile of the approved 2,400 no. space car park located between the access road to the racecourse from the Carrickmines junction on the South Eastern Motorway and the approved, but now excluded, sprint

racetrack; and alterations to the capacity and construction of the approved on-site water reservoir.

5.0 Planning Authority Decision

5.1. Planning Authority Reports

- A Vacant Sites report was prepared which for the site outlining the dates of the visits to the site, the area, zoning and the type of site for the purposes of the Act which in this case is Residential. It is noted that a section of the site appears to operate on an intermittent basis as an overflow car park associated with Leopardstown Racecourse.
- In terms of need for housing (tests outlined in Section 6(4)) it is stated that in terms of (a) any site zoned for residential development implies that there is a need for housing in accordance with Section 5(1)(a)(i); (b) for 3-bed house average monthly rent is €2,687 (Sept 2017) and average purchase price is approx. €492,217 (2017); (c) approx. 4,927 households qualified for social housing support (October 2017); (d) 422 properties for sale (295) or rent (127) (Sept. 2016) which is 0.5% of the 88,500 housing stock with the assessment noting that having regard to the criteria that it is considered there is a need for housing in accordance with Section 6(4) of the Act.
- In terms of suitability for housing (tests outlined in Section 6(5)) in terms of (a) as site is zoned for housing it is considered suitable for housing; (b) site is served by public infrastructure and facilities; and (c) there does not appear to be any physical condition or constraint impacting the site which might affect the provision of housing and in conclusion it is stated that the site does appear suitable for the provision of housing.
- In relation to the majority of the site being vacant or idle for the last 12 months, it is stated that while a section of the site does appear to operate on an intermittent basis as an overflow car park associated with the Racecourse, such use would not be considered to be a full and active use, as detailed in the Circular Letter (PL07/2016) and that the overflow car park was not in active use at the time of

either of the site visits. Aerial photography is outlined which verifies the consideration of vacancy.

- Site is one of the largest residentially zoned and serviced undeveloped land banks in the County with reference made to the inclusion in the circular of reference to development appropriate to the zoning and concludes that the site is a vacant site as it is situated in an area where there is a need for housing, the site is suitable for the provision of housing and the site or the majority of the site is vacant or idle.

5.2. **Planning Authority Notice**

Planning Authority decided under section 7(3) to issue a notice on 26th January 2018 referencing sections 5(1)(a) 5(2) of the Act and stating that the site has been entered onto the Vacant Sites Register. The notice was issued to Horse Racing Ireland.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

An appeal was received on behalf of Horse Racing Ireland which is summarised as follows:

- No valid grounds for its inclusion on Register as does not meet the definition of vacant site in the Act and has not been vacant or idle for 12 months;
- Land must meet all the tests sets out in Section 5(1)(a) to be considered a vacant site;
- Do not dispute land is situated in an area in need for housing and subject to defined access arrangements given the limited public access to the site it would be generally suitable for the provision of housing but disputed that it is wholly or in the main vacant or idle;
- In accordance with its statutory responsibility for development and promotion of horse racing industry, HRI's primary objective is to secure the best utilisation of the racecourse lands including those at Leopardstown for horse racing purposes;

- Use of any land within the overall racecourse estate is always with the objective of maximising the benefit for horse racing;
- Consultants appointed to complete a masterplan for the overall racecourse with the intention that the plan is completed as quickly as possible with all lands currently held by HRI in use for horse racing purposes or for uses that support horse racing;
- Council are aware that this process is underway and presumption behind entering lands in VSR that it is available in whole or in part for residential development and would be developed for that purpose does not reflect reality of situation.
- Permission granted on appeal for alterations and modifications to Leopardstown racecourse which included provision of car parking areas for racecourse use (D02A/0698) with one of the car parks approved on 7.67 ha in northwest section of subject land (overall permission drawing attached) with alterations to the levels and profile of the approved car park approved in June 2005 (ref. D05A/0497) with car park as amended by the 2005 permission constructed and used for parking when required during race meetings with a shuttle bus service provided;
- Land also being held as a potential site for a new straight sprint course of up to 1,200 metres, the absence of which is a significant weakness at Leopardstown compared to other similar international courses with balance of land needed for racecourse patron car parking;
- To be placed on Register sites must meet criteria in Section 6 particularly section 6(6) in this instance which the circular letter (Appendix 1) requiring a clear evidence basis for identifying vacant sites;
- In the event it is determined that criteria in Section 5 are met the criteria in Section 6(6) are not satisfied and site should not be entered as evident from current physical condition of the site that the land does not have adverse effects on existing amenities, does not reduce the amenity provided by existing public infrastructure and facilities in the area not has adverse effects on the character of the area.

- As assessment of subject land carried out by the County Council is not available it is not evident if due and proper regard was had to the above criteria and if it had that there is no basis for doing so.

6.2. Planning Authority Response

A response received from the Planning Authority to the grounds of appeal are summarised as follows:

- Reasoning pertaining to the Planning Authority's decision to enter the subject site is comprehensively set out in the documentation previously issued to the Board and attached which include a vacant site report and a report on the submission received which set out the factors considered in arriving at decision to place on the VSR with many of the matters raised in the Appeal addressed in same;
- Argument that site does not meet Section 5(1)(a)(iii) that the site, or the majority of the site is vacant or idle made previously in submission to the Council to which the PA responded and which noted that notwithstanding intention to prepare a masterplan for the lands there is no provision in the Act for not entering a vacant site on the basis of impending plan for the potential future use with the lands zoned for residential use and not being used for this purpose;
- Acknowledged part of site permitted for car parking and a sprint track as part of the wider development of the lands with this permission extended with scheme remaining part implemented with permission for sprint track omitted under permission D04A/0730 (PL06D.208894);
- Car park was not in active use at time of two separate site inspections (Oct. 2016 & Jan 2018) with aerial photography dates April 2015 and June and December 2013 verifying car park not in active use with reference to Appendix 3 of the Circular letter which refers to temporary short term or periodic ad hoc use of sites which are not considered, as stated in the Circular, to comprise a full and active use;
- While site may be used intermittently as an overflow car park it is not in full and active use and therefore should be considered vacant and idle with section 5(1)(a)(iii) referencing the site or the majority of the site with the landowner

stating in their response to the Council that 42% of the site is not idle as it is being used as a car park in accordance with the permission;

- The car parking area forms a smaller apportionment of the site while the majority of the site comprises undeveloped/greenfield lands not in use;
- Application of Section 6(6) of the Act relates to regeneration land under Section 5(1)(b) and not to residential land under 5(1)(a) with Guidance for same in the Circular stating that a vacant site should meet all of the initial relevant criteria set out in Section 5 further supported by the criteria for determination of certain factors set out in Section 6 with the Circular at Appendix One outlining the criteria for residential lands with reference to Sections 6(4) and 6(5) of the Act;
- The criteria for assessing a vacant site on regeneration lands, as outlined in the Circular (appendix 1) are outlined with reference to Section 6(6) and considered that the PA have appropriately assessed the site under the criteria for residential land and that section 6(6) is not relevant in this instance;
- Appendix 4 of submission provides a supporting narrative to provide some contextualisation including its relationship to surrounding development, infrastructure capacity and current unsustainable and infrequent use;
- Notes that the car park which the appellants state is constructed comprises little more than a flat sterile area with somewhat intermittent hardcore substrate surfacing and very little else in the nature of mitigating landscaping;
- Luas incorporated a racecourse stop at edge of the site to facilitate race day patrons (via shuttle bus) with infrastructure completed but has remained 'mothballed' while future of HRI lands remains under consideration;
- Noted that permission granted under 2002 reference was in effect a defacto masterplan for the lands but none of the 'big ticket' elements have been expedited;
- Reference by appellants to need for a new sprint track which was included in 2002 permission but has not been development and omitted under Ref. D04A/0730 (PL06D.208894);

- Outside of primary events average attendance at race events at c,5,400 with significant car parking capacity across HRI lands to accommodate car parking for average race days;

6.3. **Appellant Response to Planning Authority Submission**

In the particular circumstances of the Planning Authority response to this appeal the Board sought a response from the appellant which is summarised as follows:

- Opportunity to review and comment on reports which informed Council decision to enter lands on Register welcomed as were not available prior to lodgement of appeal despite a request to the Council;
- Reiterate that all lands held are in use for horse racing purposes or for uses that support horse racing with Council aware that process of completing a masterplan for the overall racecourse is underway and presumption about lands available in whole or part for residential purposes does not reflect reality of situation;
- Appellant would point to apparent contradiction between specific objective in the Development Plan seeking to support the status and continued viability of Leopardstown Racecourse and Council's determination to include the lands on the VSR with the levy a discouragement to future development of the racecourse;
- Council's view that car park is not in active use based on two inspections and satellite imagery is totally erroneous;
- With exception of 7 June 2013 all other days quoted were non race days with car park not in use with race on 7 June 2013 run in the evening so if imagery taken during the day the car park would not have been in use;
- Car park has and continues to be used for parking when required during race meetings and is very important for biggest race meetings with patrons serviced by way of a shuttle bus;
- Council reference to car park as used on intermittent basis as an overflow car park and quoted section of Circular referring to use as a temporary short term or periodic ad hoc basis and therefore not in full and active use and thus vacant is not correct;
- Reference is made to amendment to definition of Vacant site as per Planning and Development (Amendment) Act 2018 and dispute Councils submission that site is

vacant or idle as all land in use for horse racing purposes or uses that support horse racing such as subject land which is used for patron car parking;

- Acknowledged that site is being used for a purpose that does not consist solely or primarily of provision of housing or development of site for purpose of such provision however purchase of land occurred before it became residential land and commencement of Section 63 of Act of 2018;
- Site is not vacant or idle and circumstances do not correspond to criteria set out in Section 5(1)(a)(iii)(II);

7.0 **Assessment**

7.1. **Introduction**

- 7.1.1. This notice has been issued under the provisions of Section 5(1)(a) of the Act which relates to residential lands. The assessment undertaken by the Planning Authority to inform the placing of the site on the Register, which I outline in section 5.1 above, refers to the tests included for residential under section 5(1)(a) by reference to Sections 6(4) & 6(5) of the Act as is required for lands zoned for residential purposes.

Section 5(1)(a) of the Act states that in the case of a site consisting of residential land –

- 7.1.2. Section 5(1)(a) of the Act stated that a site is a vacant site if, in the case of a site consisting of residential land:-

- (i) the site is situated in an area in which there is a need for housing,
- (ii) the site is suitable for housing, and
- (iii) the site, or the majority of the site, is vacant or idle.

- 7.1.3. As I note above, Section 5(1)(a)(iii) has been amended by Section 63 of the Planning and Development (Amendment) Act 2018 which commenced upon coming into effect of the Act (19 July 2018). This section of the Act amends Section 5 of the Act of 2015 by substituting Section 5(1)(a)(iii) for the following:

the site, or the majority of the site is—

- (l) vacant or idle, or

(II) being used for a purpose that does not consist solely or primarily of the provision of housing or the development of the site for the purpose of such provision, provided that the most recent purchase of the site occurred—

(A) after it became residential land, and

(B) before, on or after the commencement of *section 63 of the Planning and Development (Amendment) Act 2018*’.

7.1.4. I would note that the appellants do not question the need for housing in the area and therefore I do not intend to address this matter. They also state in their appeal that subject to defined access arrangements given the limited public access to the site it would be generally suitable for the provision of housing. The appeal and my assessment below will address subsection (iii) that being whether the site is vacant or idle (I) or being used for a purpose that does not consist solely or primarily for residential purposes etc (II).

7.2. Vacant or Idle/Purpose of the Lands

7.2.1. In relation to the vacancy or otherwise of the site or part thereof, there are a number of considerations. Firstly, as outlined in Section 3.1 above, Section 5(1)(a)(iii) has been amended by Section 63 of the Planning and Development (Amendment) Act, 2018 which states that the site, or the majority of the site is—

(I) vacant or idle, or

(II) being used for a purpose that does not consist solely or primarily of the provision of housing or the development of the site for the purpose of such provision, provided that the most recent purchase of the site occurred—

(A) after it became residential land, and

(B) before, on or after the commencement of *section 63 of the Planning and Development (Amendment) Act 2018*’.

7.2.2. I will address both (I) and (II) in turn but I would note that the legislation as written refers to (I) or (II) rather than both.

7.3. Vacant or Idle

- 7.3.1. I note the comments made by both the Planning Authority and the Appellant in respect of their assertions about the site in terms of it being vacant or idle. Central to the Planning Authority's consideration as outlined in their report is that, while it is acknowledged that part of site was permitted for car parking, the 2002 scheme remains part implemented with the permission for the sprint track omitted under permission D04A/0730 (PL06D.208894). I have outlined above in terms of the planning history the sequence of the permission pertaining on the lands. While elements of the permission may not have been implemented with many of the elements specifically excluded by way of an amending permission, the Board I would suggest is concerned with what has permission which includes the car park element.
- 7.3.2. I have attached the site layout plan and the Board Order for PL06D.208894 (D02A/0698). The car park on this site is clearly denoted on Drawing C136 which I would note encompasses most of the area included within the red line of the boundary of the Section 7(3) notice. Amendments to the profile of the car park were permitted by the Planning Authority under Ref. D05A/0497. Therefore it is clear that permission exists for the car park use on this site.
- 7.3.3. The Planning Authority state that the car park was not in active use at the time of two separate site inspections (Oct 2016 & Jan 2018) with aerial photography dating from April 2015 and June and December 2013 used to verify that the car park was not in active use. I would however refer to the appellant's argument that in the absence of race meetings it would not be expected that the car park would be in use. The Planning Authority reference Appendix 3 of the Circular letter which refers to temporary short term or periodic ad hoc use of sites which are not considered, as stated in the Circular, to comprise a full and active use. I would suggest that the PA are referencing an under-utilisation of the site which I would suggest is not the same as being vacant and idle. Therefore, the site has a permitted use as a car park associated with the Racecourse which is itself used when race meetings are held and by its very nature would not be expected to be used on days when racing is not being held and therefore not on a continual basis.
- 7.3.4. The Planning Authority argue that the while the site may be used intermittently as an overflow car park it is not in full and active use and therefore should be considered vacant and idle with section 5(1)(a)(iii) referencing the site or the majority of the site. The Planning Authority consider that the car parking area forms a smaller

apportionment of the site and that the majority of the site comprises undeveloped/greenfield lands not in use. It would appear however from the site layout plan referenced above that the car parking area permitted as part of the 2002 permission constitutes a large area of the site which is subject of this Notice. I would note that since this permission that the site has now been divided into two land parcels by the Luas line and therefore part of the site is not adjoining the permitted car park area.

- 7.3.5. In conclusion on this point, I do not consider that it is appropriate to include lands to be subject of a levy which have a permitted use notwithstanding that the use is not continual. It was clear at the time of the 2002 permission that the associated elements of the permission related to the Racecourse which is not a continual 'full and active' use. I do not consider it is appropriate to re-examine the suitability of the permitted use of this area of the site for car parking after permitting the use and I do not consider that the legislation in its spirit sought to include lands with permitted and implemented uses such as is the case in this instance. It would be most appropriate, I would suggest to the Board, for the PA to address those parts of the site that have not permitted and implemented uses. I do not consider that the subject lands as outlined in the subject notice can be considered to be vacant or idle as per Section 5(1)(a)(iii) or Section 5(1)(a)(iii)(I) as amended and the notice should be cancelled in this regard.

7.4. Purpose of the Lands

- 7.4.1. Notwithstanding my considerations as above that the site is not vacant or idle as per Section 5(1)(a)(iii) or Section 5(1)(a)(iii)(I) as amended, Section 63 of the Planning and Development (Amendment) Act, 2018 provides a revised definition of Section 5(1)(a)(iii) of the Act with subsection (II) included and referring to sites which are being used for a purpose that does not consist solely or primarily of the provision of housing or the development of the site for the purpose of such provision, provided that the most recent purchase of the site occurred—
- (A) after it became residential land, and
 - (B) before, on or after the commencement of *section 63 of the Planning and Development (Amendment) Act 2018*.”.

7.4.2. The appellants have acknowledged that the site is being used for a purpose that does not consist solely or primarily of provision of housing. They state that the purchase of the land occurred before it became residential land and the commencement of Section 63 of Act of 2018. While the appellants do not give the dates of either their first purchase of the lands or when it became residential, I note from the Inspectors Report on appeal PL06D.201575 (2002) that the operative Development Plan at that time was the Dun Laoghaire Rathdown Development Plan 1998. It continues by stating that the site is largely within zoning objective “F” the objective of which was to preserve and provide for open space and recreational amenities. It was noted that two areas of the site, one in the south-eastern portion of the site and the lands to the southwest of the Motorway reservation were zoned with the objective “A1” – to provide for new residential communities in accordance with approved action area plans. I would also note that on appeal reference PL06D.208894 (2004) the Inspectors Report notes that the site was stated as being largely within zoning Objective F, the objective of which is ‘*to preserve and provide for open space and recreational amenities*’.

7.4.3. In this regard the site in question was in the ownership of the appellants prior to it becoming residential land. I would also refer the Board to the definition of residential land at Section 3 of the Urban Regeneration and Housing Act 2015 which states that residential land means land included by a planning authority in its development plan or local area plan in accordance with section 10(2)(a) of the Act of 2000 with the objective of zoning for use solely or primarily for residential purposes, and includes any structures on such land (my emphasis). This provides that the relevant date for the consideration of the ownership of the lands vis a vis the zoning is the 1st January 2001 that being the date that Section 10 of the Planning and Development Act 2000 was commenced.

7.5. Other Matters

7.5.1. Another argument put forward by the appellant refers to Section 6(6) of the Act in respect of the amenities of the site however, and as also pointed out by the Planning Authority in their response to the appeal, these are the tests referenced for sites deemed to be vacant under Section 5(1)(b) of the Act which refer to sites designated for regeneration. It is clear from the Notice issued that the Planning Authority were of

the opinion that the site was vacant as per Section 5(1)(a) of the Act (sites zoned for residential purposes). Therefore I do not intend to address these grounds as they are not relevant to the Notice issued which relates to residential given the site is zoned for residential purposes.

8.0 Recommendation

I recommend that in accordance with section 9(5) of the Urban Regeneration and Housing Act 2015, the Board should cancel the entry on the register of site (VS-0001) lands adjacent to Leopardstown Racecourse, Dublin 18 was vacant or idle for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 26th January 2018 shall be removed.

9.0 Reasons and Considerations

9.1. Having regard to

(a) the information submitted to 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 Inspector,

(d) the inclusion of a permitted car park area within the boundary of the vacant site, and

(e) that while the site is being used for a purpose that does not consist solely or primarily of the provision of housing or the development of the site for the purpose of such provision, the most recent purchase of the site occurred prior to its becoming residential land as defined by Section 3 of the Urban Regeneration and Housing Act 2015, and before, on or after the commencement of section 63 of the Planning and Development (Amendment) Act 2018

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.

Una Crosse
Senior Planning Inspector

October 2018