



An
Bord
Pleanála

Inspector's Report ABP-301060-18

Type of Appeal	Section 9 Appeal against section 7(3) Notice
Location	Site between Ballyogan Lawn and Holy Trinity School, Leopardstown, Dublin 18.
Planning Authority	Dun Laoghaire Rathdown County Council
Planning Authority VSL Reg. Ref.	VS-0005
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 site between Ballyogan Lawn and Holy Trinity School, Leopardstown, 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 - 0005, has one stated registered owner, Horse Racing Ireland. For the Boards information a separate appeal made by the same appellant relates to lands adjacent to Leopardstown Racecourse to the south east of the subject site (Ref. ABP-301059-18).

2.0 Site Location and Description

The site which has an area of approximately 4.83 hectares. The site is located in close proximity to the Green Luas line and is c.350m from the nearest stop. The site is bounded to the north by the M50 and to the east by the residential area known as Ballyogan Lawn. The Holy Trinity national School is located to the west of the site. To the south of the site there are undeveloped lands associated with the Leopardstown Valley Shopping Centre.

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)

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.

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

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

Variations to previously approved plans for alterations and modifications to the Racecourse (Reg. Ref. D02A/0698. An Bord Pleanala 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.

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**

Variations to the previously approved plans for alterations and modifications to the Racecourse (Reg. Ref. D02A/0698); An Bord Pleanala 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 stated that the subject site is not in residential use and is not being used for the purpose for which it was zoned. It is also noted that there is evidence that the site may have previously been used on occasion as an overflow car park for the Leopardstown Race Course.
- 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 the site was vacant on the date of both site inspection (October 2016 and January 2018) and is considered to have been vacant and idle for the

past 12 months. Aerial photography is outlined which verifies the consideration of vacancy.

- Site does not have an active use and is currently vacant and idle and is also attracting an element of anti-social behaviour. Reference is made to the Circular (PL07/2016) which references to temporary uses and 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;
- Acknowledged site is zoned for residential purposes;
- Do not dispute land is situated in an areas 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.
- Entire of the subject land is used when required as one of the patron car parks during race meetings, particularly major meetings in accrodacen with a permission granted in July 2003 and is part of a scheme of alterations and modifications to the overall racecourse with the overall approved drawing attached to the appeal;
- While the site has no buildings on it, it is not idle as it is being used as a car park in accordance with the permission granted and would not meet the criteria in Section 5(1)(a);
- 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) state provide a clear evidence basis for identifying vacant sites;
- In the event the Board determine the 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 the subject lands 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 site permitted for car parking under Ref. D02A/0698 which was extended until July 2018. Correspondence received as part of the application to extend the permission (D02A/0698/E) stated that there are two significant elements of the approved development that have not been completed, the approved layout and extension of the car park adjacent to the former HRI building and the Ballyogan car park to the southwest of the M50 motorway.
- Site visits and aerial photography confirm that the Ballyogan car park remains to be completed;
- Circular PL07/2016 notes that an extant permission on a site should not be a determining factor in the application of the levy;
- Reference is made 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;
- Site not in active use and while may be used intermittently as an overflow car park it is not in full and active 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;
- 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;
- Requirement of condition 7 of the 2002 permission required that the car parking area be finished as per the details submitted to the Planning Authority in October 2002 which have not been carried out.
- Even if the site is used an informal overflow for 4/5 race meetings remains idle and unused for remaining days of the year and sits uncomfortably and incongruously in the context of the significant ongoing development taking place in the area.

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 and 7 June 2013 was 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 having direct access to racecourse by way over the bridge over the M50;
- 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 Council's 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.
- 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—
- (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*'.
- 7.1.4. 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

7.3. Vacant or Idle

- 7.3.1. The appellants assert that the site has the benefit of permission for a car park and that it is used for car parking associated with race meetings particularly for major meetings. I would note that the site layout plans associated with the 2002 permission clearly outline the use of this area of land as a car park. The Planning Authority state that the requirement of condition 7 of the 2002 permission required that the car parking area be finished as per the details submitted to the Planning Authority in October 2002 which have not been carried out. I would refer the Board to the Board Order for PL06D/201575 which refers to the layout and surfacing of the Ballyogan car park. However, I would note that this matter is one of compliance with a condition and therefore an enforcement matter which is outside the Board's remit.
- 7.3.2. The Planning Authority further assert that even if the site is used as an informal overflow car park for 4/5 race meetings that it remains idle and unused for the remaining days of the year and sits uncomfortably and incongruously in the context of the significant ongoing development taking place in the area. While the site may not be in constant use and arguably under-utilised, if permission exists for the use of the site for car parking associated with a Racecourse which by its nature is not in constant use, it is not appropriate, in my opinion, that the Planning Authority seek to effectively force the change of use of the site from one which is permitted and implemented, notwithstanding compliance, to another which they consider more appropriately reflects the zoning and surrounding uses. I do not consider it is appropriate to re-examine the suitability of the permitted and implemented use of this area of the site for car parking after permitting the use. Therefore, 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 recommendation above that the site is not a vacant site as set out in Section 5(1)(a)(iii) or Section 5(1)(a)(iii) (I) as amended I will also address the revisions to the Act as amended by Section 63 of the Planning and Development (Amendment) Act, 2018 which includes an additional 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.*”

I would however note that section 5(1)(a)(iii) refers to Part (I) or (II) and therefore only one part must be met.

7.4.2. The appellants have acknowledged that the site is being used for a purpose that does not consist solely or primarily for the 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. However they do not give the dates of either their first purchase of the lands or when it became residential.

7.4.3. I note from the Inspectors Report on appeal PL06D.201575 (2002) that ‘the operative Development Plan was the Dun Laoghaire Rathdown Development Plan 1998 and that 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 are zoned with the objective “A1” – “to provide for new residential communities in accordance with approved action area plans”. It also refers to the Stepside Action Area Plan approved by the Planning Authority which includes the lands southwest of the motorway incorporating the Ballyogan car park. This site is indicated as a reserved site and there is reference in the plan to utilise all or part of these lands as an overflow car park.

7.4.4. In relation to the zoning of the site and the last purchase, what is relevant is when the site was purchased in relation to the definition of residential land in the 2015 Act which as per Section 3 of the Act 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. The appellants were clearly the owners of the site prior to the commencement of the 2000 Act on 1 January 2001.

- 7.4.5. Therefore, as I outline above the site has a permitted and implemented use, notwithstanding compliance, and the site was owned by the appellant prior to it becoming residential land as defined by the Act and therefore it cannot be considered to be vacant or idle for the purposes of Section 5(1)(a)(iii).

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**

- 8.1. 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-0005) site between Ballyogan Lawn and Holy Trinity School, Leopardstown, 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