



An
Bord
Pleanála

Inspector's Report ABP-301161-18

Type of Appeal	Section 9 Appeal against section 7(3) Notice.
Location	Site off the Old Bray Road, Foxrock, Co. Dublin.
Planning Authority	Dun Laoghaire Rathdown County Council.
Planning Authority VSL Reg. Ref.	VS-0011.
Site Owner	Dunnes Stores (George's Street) Unlimited Company.
Planning Authority Decision	Place on Register.
Date of Site Visit	26 July 2018.
Inspector	Stephen Rhys Thomas.

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 off the Old Bray Road, Foxrock, Co. Dublin on to the Vacant Sites Register (VSR) in accordance with the provisions of section 6(2) of the Urban Regeneration and Housing (URH) 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 Notice was issued to Felhurst Ltd. It is outlined in the appeal that Felhurst Limited has dissolved by merger with Dunnes Stores (George's Street) unlimited Company which as successor to Felhurst Limited as owner of the property appeals the decision to place the site on the Register.

2.0 Site Location and Description

- 2.1. The site, with a stated area of 1.89 Hectares, is located in Cornelscourt Village, County Dublin. The site bounds the N11 dual carriageway (Stillorgan Road) and takes access from the Old Bray Road between the AIB bank building and Texaco petrol station. The remainder of the site bounds the rear of existing housing along the Old Bray Road and Willow Grove.
- 2.2. The site slopes downwards from south west to the north west. The majority of the site is overgrown with grass and other vegetation. To the north western portion of the site an area has been levelled and surrounded by a high earthen berm and is surfaced with hardcore/gravel. No cars were parked on this area, however, a landscape maintenance van was present, so too were operatives performing the task of clearing/cutting weeds and grass.

3.0 Statutory Context

- 3.1. **Urban Regeneration and Housing Act 2015 (as amended)**
 - 3.1.1. The Notice issued under Section 7(3) of the Act states that the planning authority 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 14 February 2018 and is accompanied by a map outlining the extent of the site to which the Notice relates.

3.1.2. The Board should note that section 5 of the 2015 Act was amended by 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**

D17A/0597 – Permission was granted for 'Retention of existing temporary car park and associated bunding. The car park will be used for retail staff and construction staff associated with the on-going retail operation and repair, maintenance and improvement works. The Retention permission sought is temporary for a period of 3 years. This application also includes permission for ancillary road markings and temporary generator, lighting arrangements. There will also be resurfacing of the car park and a soakaway towards the north east of the car park area'.

ABP-301315-18 - A first party appeal was lodged (ABP-301315-18) on 27 March 2018. The planning appeal was withdrawn under Section 140(1)(a) of the Act, signed on 4 July 2018.

Enforcement File number **ENF 113/17**. Warning letter issued.

5.0 **Planning Authority Decision**

5.1. **Planning Authority Reports**

- A Vacant Sites report outlining the date of the visit to the site (3 November 2016), the site area, zoning and the type of site for the purposes of the Act which in this case is Residential. It is noted that a part of the site is in use as a car park and that this activity may be unauthorised, a pending planning application is noted – pa reference D17A/0597 refers. The remainder of the site is a greenfield

and not in use. 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.

- 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 appears 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 site inspection November 2016 and was considered to be in the same condition for the preceding time periods (aerial photography) June/December 2013 and April 2015. It is considered that the site is vacant and has been vacant for a period beyond twelve months.
- Site does not have an active use. Reference is made to the Circular (PL07/2016) which references 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.
- The planning authority's submission is accompanied by a Report on the Submissions received in relation to the establishment of the register, a record of the chief executive's order, the initial submission from Dunnes Stores on behalf of

Felhurst Ltd (landowner) in relation of the intention to place the site on the register.

5.2. **Planning Authority Notice**

Planning Authority decided under section 7(3) to issue a notice on 14 February 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 Felhurst Ltd.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

An appeal was received from Dunnes Stores (George's Street) Unlimited Company which is summarised as follows:

- The planning authority has not fully implemented all provisions of the 2015 Act, specifically an amendment to section 10(2)(h) of the 2000 Act regarding an additional mandatory objective to be included in the Development Plan. The adopted Development Plan has not been varied to take account of the 2015 Act requirement and no areas have been designated for regeneration. The identification of such areas for regeneration on the Council's website does not fulfil the requirements to engage in a statutory process regarding the implementation of the levy. The non inclusion of a mandatory objective regarding section 10(2)(h) of the 2000 Act precludes the board from having regard to the Core Strategy of the Plan.
- The planning authority have not complied with Circular Letter PL 7/2016, and should be regarded as a statutory instrument requiring compliance. The Council have erred as follows: did not integrate the requirements of section 10(2)(h) of the 2000 Act into the Development Plan, have not designated areas for regeneration and/or residential land in the Development Plan and have not prepared maps in the Development Plan to show such areas.
- The site is not vacant or idle. A significant portion of the site is in use as a car park and so a significant portion of the site is in use. The Council have not issued any documentation to confirm that the use of the site is unauthorised and a permission for the car park was issued in February 2018.

- The appeal is supported by copies of the relevant notices, a location map, a copy of the submission made to the planning authority, a notification to grant permission for the car park, a copy of Circular Letter PL 7/2016 and a letter from a security company that confirms the site security over the preceding 12 months.

6.2. Planning Authority Response

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

- Draw ABP attention to the Vacant site report and report on submission received which informed decision to enter land on the register;
- Legislative provisions of Section 10(2)(h) of the Planning and Development Act 2000 (as amended), relate to regeneration land (Section 5(1)(b) and not to residential land (Section 5(1)(a)) as is applicable in the subject case with Section 3 of the 2015 Act including definitions for both residential and regeneration land;
- Residential land defined as meaning land included by a planning authority in its Development Plan or LAP in accordance with section 10(2)(a) of the Act of 2000, with the section 7(1) & 7(3) notices issued referencing the residential nature of the lands (section 5(1)(a));
- Residential definition refers to land zoned for residential purposes, the subject site is zoned A and was assessed as a vacant site in accordance with Section 5(1)(a);
- The planning authority are of opinion that there are no legislative grounds to support assertion that the site was in use as a car park, at the time the site was placed on the register as part of the site was the subject of a live retention application for use as a temporary car park for a period of 3 years (granted 28 February 2018);
- At the time the site was placed on the register it did not have the benefit of permission for use as a car park, Circular PL07/16 advises that planning authorities should disregard any unauthorised development or use with the use as a temporary car park disregarded on this basis;

- The circular provides guidance at Appendix 3 on temporary short term uses referencing that a site that is vacant and used for such temporary purposes should not be considered to be in full and active use;
- The temporary nature of the permission sought was explicit in the documentation with the accompanying cover letter stating that the majority of the site remaining under the applicants control could in due course be subject to an application for residential development with the car park use reversible;
- The area in temporary use as a car park comprises a minority of the overall site with the remainder remaining undeveloped, section 5(1)(a)(iii) of the Act references the site or the majority of the site, in this case the majority of the site is outside of the proposed car park area;

7.0 **Assessment**

7.1. **Introduction**

7.2. The 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) and by reference to Section 6(4) of the Act as is required for lands zoned for residential purposes.

7.3. Section 6(6) of the URH 2015

I note that the appellant, in the grounds of appeal, refers to regeneration lands (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 2015 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 2015 Act. 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.

7.4. Planning Permission

The appellant has highlighted the fact that the site was in use for staff car parking, for which a temporary permission allows such use for three years from February 2018. Firstly, I note that the site was first visited on the 3 November 2016 and the Notice of Entry was issued on the 14 February 2018. The planning authority observed that the use of a portion of the site for car parking was possibly unauthorised and a planning application was pending at the time of assessment. In such a case, the determination of the Planning Authority or the Board on appeal that the site is or is not vacant or idle is governed by section 6(7) of the 2015 Act. The relevant section of the Act states that in the determination of whether a site was vacant or idle for the duration of 12 months, the Board on appeal shall not have regard to any unauthorised development or use. Irrespective of whether the ongoing car parking use obtained a temporary planning permission by February 2018, during the relevant period there was a degree of doubt about whether or not the car parking use was authorised. As no evidence has been produced by the appellant to demonstrate to the Board that the car parking use was authorised during the relevant period, the Board should have no regard to the car parking use.

Notwithstanding the authorised or unauthorised nature of the car parking use over a portion of the site, I note that the extent of the car parking area falls over a minority of the site whilst the larger proportion remains and remained unused. I calculate that the entire car parking application area (0.5 Hectares) would amount to approximately a quarter of the site (appeal site 1.89 Hectares), whilst three quarters of the site is unmanaged grassland with no discernible use.

In my view, because the car parking use extends over a minor proportion of the overall site, it does not in itself render the site in full use. Therefore, the site as delineated by the planning authority, that comprises both car parking and unused grassland is vacant or idle for the purposes of the 2015 Act.

7.5. Vacant/idle, Housing Need and Site Suitability for Housing

The appellant has not appealed whether there is a need for housing in the area or if the site is suitable for housing. I note that the site is zoned for housing, this suggests that there is a need for housing in the area. I also note that there are both older and recently completed residential developments in the vicinity and this suggests that the site is suitable for housing. I also note the information and data concerning

sections 6(4) and 6(5) submitted by the planning authority, that demonstrates there is a housing need in the area and the suitability of the site for housing. Finally, the majority of the site is not in use for any purpose at present and is both vacant and idle.

The placement of a site on the register requires three criteria to be fulfilled under section 5(1)(a)(i), (ii) and (iii) of the 2015 Act. I would advise the Board that there have been recent amendments to the Urban Regeneration and Housing Act 2015 as a result of the Planning and Development (Amendment) Act 2018. Specifically, section 5 of the Act of 2015 is amended, in paragraph (a) of subsection (1), by substituting the following subparagraph for subparagraph (iii):

“(iii) 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.”

I am convinced that both sections 5(1)(a)(i) and (ii) of the 2015 Act are fully met; housing need and site suitability for housing. Furthermore, as detailed by me in paragraph 7.4, the site is vacant and idle in accordance with section 5(1)(a)(iii)(I) of the 2015 Act. The amendment requires a site to be vacant/idle OR used for a purpose other than the provision of housing in terms of the most recent purchase in accordance with both parts (A) and (B). In this instance, the majority of the site is vacant and idle, parts (A) and (B) do not apply. I am satisfied that the site is vacant and idle and the site should remain on the register as all three requirements under section 5(1)(a) of the 2015 Act (as amended) have been met.

8.0 Recommendation

I recommend that in accordance with section 9(5) of the Urban Regeneration and Housing Act 2015 (as amended), the Board should confirm the entry on the register

of site (VS-0011) off the Old Bray Road, Foxrock, Co. Dublin was vacant or idle for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 14 February 2018 shall be deemed to take effect from that date.

9.0 Reasons and Considerations

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 the majority of the site was and is vacant or idle, there is a need for housing in the area, the site is suitable for the provision of housing as demonstrated by the residential land use zoning for the area, 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

06 September 2018