



An
Bord
Pleanála

Inspector's Report ABP-301838-18

Type of Appeal

Section 9 Appeal against section 7(3)
Notice.

Location

Site at Former Parochial House,
Ballygall Road West, Finglas, Dublin
11.

Planning Authority

Dublin City Council.

Planning Authority VSL Reg. Ref.

VS/0362.

Site Owner

John Lyons.

Date of Site Visit

13 September 2018.

Inspector

Stephen Rhys Thomas.

1.0 Introduction

- 1.1. This appeal refers to a section 7(3) notice issued by Dublin City Council, stating their intention to enter the site at the Former Parochial House, Ballygall Road West, Finglas, Dublin 11 on to the Vacant Sites Register (VSR) in accordance with the provisions of section 6(2) of the Urban Regeneration and Housing Act 2015 (as amended).

2.0 Site Location and Description

- 2.1. The appeal site is located on the northwestern side of Ballygall Road West, to the east of Finglas village in north Dublin. The site is irregular in shape and fronts onto Ballygall Road West. The site is undeveloped and extensively overgrown, with mature trees along the boundaries. A vehicular access gate to the site is located along Ballygall Road West, approximately 80m northeast of the junction with Main Street. The gateway entrance has a large quantity of refuse bags piled behind steel gates and steel fencing.
- 2.2. Bounding the site to the north are the grounds and car park of St. Canice's Church. Ballygall Road West to the southeast, sits below the green space serving two-storey terraced housing in Ballygall Crescent and Finglas Place, to the east of the appeal site. The rear of properties along Main Street bound the site to the southwest. Ground levels within the site drop gradually towards the southeast and quite steeply down to the road.

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 17 May 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 Dublin City Development Plan 2016-2022 is the operative development plan. The site is located on lands that are subject to zoning objective Z1 – ‘To protect, provide and improve residential amenities.’.
- 3.2.2. One of the key strategies of the Development Plan, as set out in section 4.4 is the creation of a consolidated city, whereby infill sites are sustainably developed and new urban environments are created, by actively promoting active land management, a key component of which is the vacant site levy.
- 3.2.3. Section 2.2.8.4 of the plan states that in accordance with the Urban Regeneration and Housing Act 2015, it is a key pillar of the development plan to promote the development and renewal of areas, identified having regard to the core strategy, that are in need of regeneration, in order to prevent: (i) adverse effects on existing amenities in such areas, in particular as a result of the ruinous or neglected condition of any land, (ii) urban blight and decay, (iii) anti-social behaviour or (iv) a shortage of habitable houses or of land suitable for residential use or a mixture of residential and other uses
- 3.2.4. Section 14.9 of the City Development Plan 2016-2022 states that the Vacant Sites Levy will apply to lands zoned Z1, Z2, Z3, Z4, Z5, Z6, Z7, Z8, Z10, Z12 and Z14.
- 3.2.5. Policy CEE16 states that it is the policy of DCC to: (i) To engage in the ‘active land management’ of vacant sites and properties including those owned by Dublin City Council, as set out in the Government’s Planning Policy Statement 2015; to engage proactively with land-owners, potential developers and investors with the objective of encouraging the early and high quality re-development of such vacant sites. (ii) To implement the Vacant Land Levy for all vacant development sites in the city and to prepare and make publicly available a Register of Vacant Sites in the city as set out in the Urban Regeneration and Housing Act 2015. (iii) To improve access to information on vacant land in the city including details such as location, area, zoning etc. via appropriate media/online resources and the keeping of a public register as a basis of a public dialogue in the public interest. (iv) To encourage and facilitate the rehabilitation and use of vacant and under-utilised buildings including their upper floors. (v) To promote and facilitate the use, including the temporary use, of vacant commercial space and vacant sites, for a wide range of enterprise including cultural

uses, and which would comply with the proper planning and sustainable development of the area and the provisions of the Development Plan.

- 3.2.6. Policy QH3 states that it is policy of the Council (i) To secure the implementation of the Dublin City Council Housing Strategy` in accordance with the provision of national legislation. In this regard, 10% of the land zoned for residential uses, or for a mixture of residential and other uses, shall be reserved for the provision of social and/or affordable housing in order to promote tenure diversity and a socially inclusive city. (ii) To engage in active land management including the implementation of the vacant levy on all vacant residential and regeneration lands as set out in the Urban Regeneration and Housing Act 2015.

4.0 Planning History

4.1. Subject Site

PA reference number **3415/17** and An Bord Pleanála reference **PL29N.249356**.
Permission refused for 5 storey over semi basement (45 spaces) with a total of 45 residential apartments. February 2018.

PA reference number **2138/17** and An Bord Pleanála reference **PL29N.248337**.
Permission refused for 5 - storey over semi - basement carpark with total of 48 residential apartments. Appeal withdrawn under S.140(1)(a) of the PDA Act 2000 (as amended). July 2017.

5.0 Planning Authority Decision

5.1. Planning Authority Reports

- 5.1.1. Register of Vacant Sites Report - The site is zoned under objective Z1 – ‘To protect, provide and improve residential amenities.’. The site is classified as residential land and has been vacant or idle for the last 12 months. A planning history is outlined for the site. The site was the location of the Parochial House attached to St Canice’s Church, the house is now removed. The site is in an area where there is a need for housing, is suitable for housing and the majority of the site is vacant/idle. The report is supported by colour photographs.

5.2. **Planning Authority Notice**

- 5.2.1. Dublin City Council advised the site owner that the subject site (Planning Authority site ref. VS-0362) had been identified as a vacant site. The notice, issued pursuant to section 7 of the Act and dated 17 May 2018, 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.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

- 6.1.1. The landowner has submitted an appeal to the Board, against the decision of Dublin City Council to enter the subject site on the Register. The grounds of the appeal can be summarised as follows:

- Attempts have been made to secure planning permission for the site, pa reference 2138/17 refused permission March 2017, pa reference 3415/17 (ABP reference PL29N.249356), refused permission February 2018. Pre-planning submission with the planning authority submitted on 29 May 2018.
- The appellant states that they have not been idle in their attempts to secure permission and hope to lodge a new planning application very soon.
- The appeal is accompanied by the Notice, appeal documentation regarding pa reference 3415/17, inspectors report ABP reference 249356 and pre-planning submission to City Council dated May 2018,

6.2. **Planning Authority Response**

- 6.2.1. The Planning Authority responded to the appeal, requesting that the following observations be noted by the Board:

- Notwithstanding the applicants attempts to secure permission, as of 21 June 2018, no new planning application has been lodged. Should permission be granted on the site and construction activity commences, the appellant is urged to contact the planning authority with regard to the removal of the site from the register.
- The reasoning for placement of the site on the register has already been outlined in the vacant sites register report.

- The site is suitable for housing, there is a housing need in the area and the site's vacancy is having an impact on the character of the area. The planning authority request that the decision to place the site on the register is upheld.

7.0 Assessment

- 7.1. 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 a vacant site 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 on the Dublin City Council VSR on the 17 May 2018.
- 7.2. By reference to the planning authority notice, it is stated that the subject site comprises residential land for the purposes of the Vacant Site Levy. The subject site is located in an area zoned Z1 – 'To protect, provide and improve residential amenities.'. Policy QH3 states that it is policy of the Council to engage in active land management including the implementation of the vacant levy on all vacant residential and regeneration lands as set out in the Urban Regeneration and Housing Act 2015. This assessment takes into account the characteristics of the site in the context of Section 5(1)(a) residential land.
- 7.3. The appellant states that they have been extremely active in the pursuit of a planning permission for the site but have so far been unsuccessful. More recently, permission was refused for 45 residential units, An Bord Pleanála reference PL29N.249356 refers. The applicant states that they have submitted a revised proposal for discussion with the Planners. The planning authority have stated that no new planning application for the site has been lodged and the site remains vacant as of the 21 June 2018. The appellant raises no issues with regard to the need for housing in the area, the suitability of the site for housing or the vacant or idle nature of the site.
- 7.4. The findings of the Council in relation to the condition of the site were confirmed by me on the date of my site visit. The site, as viewed from the public road and churchyard, has all the characteristics of a vacant and idle site. The site is overgrown with mature vegetation and shows no signs of recent use, other than the dumping of

refuse that has occurred at the gateway to the site from Ballygall Road West. From my observations of the site, I concur with the findings of the planning authority and I am satisfied that the site is vacant and idle.

- 7.5. The appellant states that a revised planning proposal is before the planning authority for discussion but no new planning application has been lodged. The Act is clear: the test for inclusion is the past condition of the site from the date of entry on the Register. I refer to Circular Letter PL7/2016, Appendix 3, that states: “where a vacant site has an extant planning permission associated with it, this should not be a consideration in determining whether to apply the levy. If such a site meets the criteria for a vacant site in respect of either residential or regeneration land, then the levy may be applied”. In this instance, to my knowledge no new planning application has been lodged with the planning authority. In my opinion, the site meets the criteria for inclusion on the VSR and the intention to lodge a planning application in the future has no weight in this assessment. I would remind the Board that the intent and application of the 2015 Act is indicated by Part 2 section 4, that states:

This Part applies to residential land or regeneration land.

In my mind, it is the intention of the Act to apply to all residential or regeneration land irrespective of planning permission or an intent to apply for planning permission.

- 7.6. The appellant has not appealed whether there is a need for housing in the area or if the site is suitable for housing, nor is any information forthcoming in relation to the use of the site for the period concerned. I note that the site is zoned for housing and that development proposals have been refused permission but not for reasons of a lack of service infrastructure or any thing affecting the physical condition of the land. This suggests that the site is suitable for housing and that there is a need for housing in the area. In addition, the site is not in use for any purpose at present or the period concerned and is both vacant and idle.
- 7.7. 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.”.

7.8. 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 the amended 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

8.1. I recommend that in accordance with section 9(5) of the Urban Regeneration and Housing Act 2015 (as amended), the Board should confirm that the site at Former Parochial House, Ballygall Road West, Finglas, Dublin 11, was a vacant site for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 17 May 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 site was and is a vacant site as demonstrated by the overgrown condition of the lands, 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 a vacant site for the relevant period.

Stephen Rhys Thomas
Planning Inspector

14 September 2018