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Bord  
Pleanála

## Inspector's Report ABP-302115-18

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| <b>Type of Appeal</b>                   | Section 9 Appeal against section 7(3) Notice.             |
| <b>Location</b>                         | Tedcastles, Dun Leary Hill, Dun Laoghaire, County Dublin. |
| <b>Planning Authority</b>               | Dun Laoghaire Rathdown County Council.                    |
| <b>Planning Authority VSL Reg. Ref.</b> | VS-0057.  |
| <b>Site Owner</b>                       | Stephen MacKenzie.  |
| <b>Planning Authority Decision</b>      | Place on Register.  |
| <b>Date of Site Visit</b>               | 01 and 11 October 2018.                                   |
| <b>Inspector</b>                        | 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 at Tedcastle, Dun Leary Hill, Dun Laoghaire, County 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)(b) and 5(2) of the URH Act 2015

## **2.0 Site Location and Description**

- 2.1. The site is located at the junction of Dunleary Hill with Dunleary Road, west of Dun Laoghaire town centre in County Dublin. The Dublin to Wexford rail line is located to the north and the area around the site is built up with a combination of apartments and older two storey buildings. The site is contained within a high concrete block and stone wall in good repair and is accessed via a large steel gate painted black. A large two storey over basement dwelling is located adjacent to the site and it fronts onto Dunleary Hill. The house is well maintained and occupied at present.
- 2.2. The subject site is mostly level with a combination of hard standing and hardcore. The portion of the site adjacent to Dunleary Hill is graded back and planted with trees. Dunleary Hill is significantly higher than the site. A large open storage shed occupies the north eastern portion of the site. The shed is old but in generally good repair. Overall, the site is well maintained and tidy. A boat trailer was parked under the shelter of the shed, however, there were no other visible users of the site.

## **3.0 Statutory Context**

### **3.1. Urban Regeneration and Housing Act 2015 (as amended)**

- 3.1.1. The Notice issued in relation to regeneration lands and the accompanying report has assessed the site on the basis of the tests outlined in Section 5(1)(b) of the Act. The Notice is dated 27 June 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 NC 'To protect, provide for and-or improve mixed-use neighbourhood centre facilities' in the Dun Laoghaire Rathdown County Development Plan 2016-2022. The site is also identified in Appendix 12 of the Development Plan: *Dún Laoghaire Urban Framework Plan*.

3.2.2. The site to the south is subject to SLO 153: *That Dun Leary House (Yellow Brick House) and associated boundary be retained in situ and renovated*.

3.2.3. Section 1.3 of the Development deals with Development Areas and Regeneration.

## 4.0 **Planning History**

PA reference **D03A/0291** and ABP reference **PL06D.204798** – Permission for a mixed-use development.

PA reference **D03A/0292** and ABP reference **PL06D.204799** – Permission for an apartment development, 55 residential units and café.

PA reference **D06A/0312** – Permission for amendments to parent permission, 4 additional apartments.

## 5.0 **Planning Authority Decision**

### 5.1. **Planning Authority Reports**

- A Vacant Sites report outlining the dates of visits to the site (02 August 2016 and 20 April 2018), the site area, zoning and the type of site for the purposes of the Act which in this case is Regeneration. The site has no active use and effects the character of the area, it is vacant and is not being used for the purpose for which it was zoned, in accordance with section 5(1)(b) of the Act.
- In terms of the tests for regeneration lands outlined in Section 6(6) it is stated that in terms of (a) through lack of maintenance the lands are ruinous and neglected;

(b) there is graffiti, rubbish and litter in and around the site, this is evidence of anti-social behaviour taking place; (c) there has been a marginal increase in population, but a decrease in housing stock, the condition of the site has had an impact on the revitalisation of the area and depressed land values.

- 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 and is situated in a regeneration area and accords with all the requirements of section 5(1)(b) of the Act.
- The planning authority's submission is accompanied by colour photographs, 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 the appellant 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 27 June 2018 referencing sections 5(1)(b) 5(2) of the Act and stating that the site has been entered onto the Vacant Sites Register.

## 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 Dun Laoghaire Rathdown County Council to place the subject site on the Register. The grounds of the appeal can be 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 site is currently used for commercial lettings and has had the benefit of planning permission for a variety of mixed use development.
- The site has had a long and continual use as a storage and distribution yard and is not an unauthorised development. In more recent times, the yard has been leased to commercial entities for storage and distribution, the yard has been used by Council contractors. The storage and distribution use is not an ad-hoc use, but continuous and permanent.
- Given that the site has been in continuous use, the entry of the site onto the register is at odds with the requirements of the Act, a period of 12 months assessment of use. The rental history of the site is outlined – lands leased to Coras Pipeline Services Ltd until 15 April 2017 to store pipes and equipment, lands leased to SIAC Construction Ltd 24 April 2017 to 15 December 2017 as a site compound for the upgrades to Monkstown Village run by Dun Laoghaire Rathdown County Council, lands leased to Irish Conservatories 16 July 2018 to 14 September 2018 to store materials for a local building project. All uses are considered to be authorised uses of the site.
- The use of the site is consistent with its historical uses and may be at odds with surrounding development. However, the site is surrounded by high granite walls, which is a characteristic of the site. The high walls prevent anti-social behaviour from occurring and the interior of the site cannot be viewed from the road.

The appeal is supported by 'Rates' documentation from Dun Laoghaire Rathdown County Council and an email from SIAC Construction requesting use of the yards.

## 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;
- The Council have adequately identified regeneration lands in accordance with the requirements of the Act. Specifically, the site is identified in the Urban Framework Plan for Dun Laoghaire, this is given statutory basis as it forms Appendix 12 of

the County Development Plan and identifies the appeal site for sensitive redevelopment;

- As a regeneration site, the redevelopment of the lands is not solely for the purposes of residential uses, any proposals should conform with the zoning.
- In terms of the use of the lands. numerous planning permissions have been sought but never implemented. The construction compound uses that did occur during the relevant period are considered not to bring the site into full and active use. The continued use of the site for such short term periods is at odds with the land use zoning.
- The landowner has advanced pre-planning proposals to develop the site and these are welcomed.

The submission is accompanied by the initial Planning Report and supporting material as before and a copy of the Dun Laoghaire Urban Framework Plan.

### 6.3. Further Submissions

The appellant has responded as follows:

- A lengthy discussion around their Freedom of Information request, declined by the Council.
- The evidence regarding the use of the site and the tenancies is reiterated.
- Disputes the photographic evidence and the impossible angles that the pictures were taken from. Contrary photographs are provided that show the site as viewed by pedestrians.
- The Council have not supported their claim that land values have fallen in the area.
- There is evidence of graffiti elsewhere in the area, the appeal site is tidy, well maintained and secure.
- The figures used by the Council for housing stock and population are negligible changes and do not meet the conditions of section 6(6)(c) of the Act.
- There were no site inspections within the relevant time period.

The submission is supported by a email that confirms Coras Pipeline Services interest in renting the yard for works on behalf of Irish Water and Dun Laoghaire Rathdown County Council.

## **7.0 Assessment**

### **7.1. Introduction**

7.2. An appeal under the amended section 9 of the Act, requires that the burden of showing that the site was not a vacant site 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 onto the Dun Laoghaire Rathdown Council VSR on the 27 June 2018.

7.3. The Notice has been issued under the provisions of Section 5(1)(b) of the Act which relates to regeneration 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 regeneration under section 5(1)(b) and by reference to Section 6(6) of the Act as is required for lands zoned for regeneration purposes.

7.4. The main concerns of the appellant are that the Council have not properly identified regeneration lands in the County Development Plan, that the lands have been in full use for the relevant period, the site is well maintained and does not affect the character of the area, there is no anti-social behaviour taking place as a result of the site and that the negligible changes in population and housing stock cannot be attributed to the appellant's lands.

7.5. The Council maintain that the site is only used on an ad-hoc basis, the appearance and condition of the site affect the character of the area, anti-social behaviour is taking place around the site its condition is impacting on the number of people living in the area and the local housing stock.

### **7.6. Regeneration**

The appellant has challenged the Council's implementation of the Urban Regeneration and Housing Act, in terms of the identification of regeneration areas in

the County Development Plan. In this regard, I note that section 1.3 of the Development Plan deals with Development Areas and Regeneration and states that Local Area Plans identify areas in need of redevelopment and/or regeneration and Dún Laoghaire, Dundrum, Sallynoggin and Stillorgan are specifically mentioned. The Dún Laoghaire Urban Framework Plan (appendix 12 of the Development Plan) identifies the appellant's site as an area suitable for sensitive redevelopment. I am satisfied that the Council have correctly and adequately provided spatial and descriptive information in the Development Plan that concerns regeneration sites. The appellant's lands are clearly located in an area in need of regeneration and it is therefore correct to consider the site a regeneration site for the purposes of the 2015 Act.

**7.7. Active Use**

7.8. The appellant and the planning authority are completely at odds concerning the vacant nature of the site. On the one hand, the appellant has shown that the site has had a number of different tenants over the recent past. These tenants have carried out works on behalf of the Council amongst others and used the lands as a site compound. Most recently, the site has been in use as a storage yard for a building contractor. The appellant maintains that this is the business character of a yard such as this. I would tend to agree that the site has and continues to be a quasi-industrial site close to the railway and Old Harbour of Dun Laoghaire. The appellant has shown that during the appropriate period, between June 2017 and June 2018, the site was in use by SIAC Construction for 7 and a half months. The planning authority's view is the contrary and they maintain that the uses listed by the appellant are ad-hoc and not in a use for the purpose the lands were zoned.

7.9. It is the nature of the area that a site of the character and use of the appeal site is located where it is. I find it difficult to dispute the information provided by the appellant that the site was in use for the purposes for which it has been long associated with, vis-à-vis a storage yard. Moreover, the dates provided by the appellant suggest that the lands were in use for more than six months of the twelve month period (the relevant period). I am satisfied that the site, in terms of its use amongst other things, as a site compound for public realm improvements in the local area, shows that the site was in full and beneficial use. On inspection of the site interior I noted that the ground was levelled and in good repair, the open storage



shed, whilst old was serviceable and in overall terms the site appears ready for its next occupants. The site was not a vacant site for the relevant period and therefore fails to meet the requirement of section 5(1)(b)(i) of the 2015 Act.

#### 7.10. **Section 6(6) of the URH Act 2015**

The appellant maintains that the site is well maintained and secured, there is no evidence of anti-social behaviour occurring in the area due to the site and the fluctuation in housing stock is negligible. Given these grounds of appeal and the contrary information presented by the planning authority, I find it necessary to assess the site against the criteria set out in section 6(6) of the Act as follows:

*(6) A planning authority, or the Board on appeal, shall determine whether or not the site being vacant or idle has adverse effects on existing amenities or reduces the amenity provided by existing public infrastructure and facilities (within the meaning of section 48 of the Act of 2000) in the area in which the site is situated or has adverse effects on the character of the area for the purposes of this Part by reference to whether—*

*(a) land or structures in the area were, or are, in a ruinous or neglected condition,*

*(b) anti-social behaviour was or is taking place in the area, or*

*(c) there has been a reduction in the number of habitable houses, or the number of people living, in the area,*

*and whether or not these matters were affected by the existence of such vacant or idle land.*

7.11. The first matter to assess is that the '*land or structures in the area were, or are, in a ruinous or neglected condition*'. The appellant states that their site is well maintained and secured. I would agree, the condition of the boundary walls are generally good with a combination of massed concrete faced with imitation stone blocks and also areas of natural granite wall. Thus, the boundary to the public realm is mainly composed of high walls. A small portion of the site's northern edge along Dunleary Hill is a low granite wall and this allows good views into the site from the footpath. The interior of the site is well maintained and tidy, being mainly composed of concrete hardstanding and aggregate hardcore areas, with some planting along the

southern boundary. As already mentioned an open storage shed occupies the northern portion of the site and whilst old, it serves the purpose of providing dry cover and it cannot be described as ruinous. I did not observe examples of ruin or neglect in the wider area that would have an adverse effect on the area's character. The appellant's premises presents boundary walls to Dunleary Hill and Dunleary Road, providing a secure boundary to a storage compound within the historically semi-industrial area of Dun Laoghaire, now in transition. In addition, the site interior shows no signs of neglect or ruin and for these reasons, the test for section 6(6)(a) is not met.

7.12. In relation to section 6(6)(b) '*anti-social behaviour was or is taking place in the area*', I note that there was no evidence of graffiti on the structures of the appeal site and there was no evidence of litter. The site interior is well maintained, tidy and difficult to access without permission, there was no evidence of antisocial behaviour on the site. In the wider area, graffiti is a feature and not an uncommon sight on blank walls and railings adjacent to railways. For this reason, I do not think that the site is having any impact on the existence of graffiti that seems to naturally occur on or close to railways. The site is well maintained and tidy, the steel entrance gates are painted black and unblemished by graffiti, I do not consider it would meet with part (b) above.

7.13. In terms of the final consideration section 6(6)(c), I note that the planning authority have stated that the population of the DED of Dun Laoghaire-Salthill has increased and that the housing stock has decreased by 0.04%. I find that the decrease in housing units to be negligible and that the increase of population appears to contradict the conclusion that the area is affected by the site alone. In any case, given the wording of section 6(6)(c) that states a reduction in houses or population, whether the site is vacant or not, the area has seen significant population increase. Finally, to clarify the intention of section 6 of the Act, sections 6(6)(a) and (b) must be taken together and Section 6(6)(c) can stand alone. In this instance, I find that the site meets none of the requirements of section 6(6) and nor can the site be categorised as a vacant site defined by Section 5(1)(b).

#### 7.14. **Other Matters**

The planning authority have not raised the issue of unauthorised development on the site and the applicant has outlined the historic uses associated with the site. In the

absence of any contrary information I do not question the established use of the site in the context of section 6(7) of the 2015 Act that relates to unauthorised development.

The appellant has raised issues with absence of fair procedures under the Freedom of Information Act and a request to the County Council for certain records, the planning authority have provided information to defend their decision. This is not a relevant matter to the assessment of the appeal on hand and I find that the applicant has been provided with an ample supply of information under this appeal by both the Council and the Board, in order to prepare a full and complete submission.

## **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 cancel that the site known as the former Tedcastles, Dun Leary Hill, Dun Laoghaire, County Dublin, was a vacant site for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 27 June 2018 shall be removed.

## **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) The condition of the site, which is secure, well maintained and tidy, that does not display any visible evidence of anti-social behaviour and therefore it is considered that it does not have adverse effects on the existing amenities or character of the area

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.

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Stephen Rhys Thomas  
Planning Inspector

15 October 2018