



An
Bord
Pleanála

Inspector's Report ABP-302116-18

Type of Appeal	Section 9 Appeal against section 7(3) Notice.
Location	Site at Junction of Enniskerry Road and Village Road, Sandyford, Dublin 18.
Planning Authority	Dun Laoghaire Rathdown County Council.
Planning Authority VSL Reg. Ref.	VS-0010.
Site Owner	Housing and Sustainable Communities Agency.
Planning Authority Decision	Place on Register.
Date of Site Visit	11 October 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 at Junction of Enniskerry Road and Village Road, Sandyford, Dublin 18 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

2.0 Site Location and Description

- 2.1. The site is located in the Woodside area of Sandyford at the junction of Enniskerry Road with Clon Burgh. East of the site are located the large residential areas of Clon Burgh and Belarmine, comprising apartments and conventional houses.
- 2.2. The site slopes downwards and eastwards from the Enniskerry Road and is bounded by a watercourse on the eastern boundary, by a mature treeline and hedge along the eastern boundary and by a palisade fence along Clon Burgh and Enniskerry Road. The site is heavily overgrown at the margins and grassland at the centre is also overgrown and colonised by weeds and shrubs.

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 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 A 'To protect and/or improve residential amenity' in the Dun Laoghaire Rathdown County Development Plan 2016-2022. The site is also subject to an objective 'County Council Programme Site' and an objective to protect and preserve trees and woodlands.
- 3.2.2. Section 1.3 of the Development Plan deals with Development Areas and Regeneration.

4.0 **Planning History**

PC/06/07 – Part 8 permission for 155 units.

D13A/0156 and ABP **PL06D.242083**. Two temporary school accommodation buildings, new entrance and exit, parking facilities, set down area, ballcourts. September 2013.

5.0 **Planning Authority Decision**

5.1. **Planning Authority Reports**

- A **Vacant Sites report** outlining the date of the visit to the site (10 August 2016), the site 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.
- 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 August 2016 and was considered to be in the same condition for the preceding time periods (aerial photography) April 2015, June 2014, December 2013 and June 2013. 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 and the planning authority 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 the Notice of intent to place the site on the register, 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 Housing Agency and a Request for Proposals regarding the delivery of 155 units on the site.

5.2. **Planning Authority Notice**

Planning Authority decided under section 7(3) to issue a notice on 27 June 2018 referencing sections 5(1)(a) 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**

An appeal was received from the Housing and Sustainable Communities Agency, that can be summarised as follows:

- The site is zoned for housing and a key objective of the site is 'County Council Programme Site'. The site can only be developed to provide social housing and this impacts upon the viability of site when compared to a conventional residentially zoned site without a social/affordable housing objective.
- The site has the benefit of a Part 8 permission for 155 units since 2007. The site has been recently transferred to the Housing Agency under the Land Aggregation Scheme in 2013, this is because the Council have failed to deliver housing on the site.
- A joint venture between Respond Housing Association and Tuaith Housing Association have so far been unable to develop the site because of complex negotiations and legal difficulties. These issues have now been solved and tender documents are due to issue soon.

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 site is zoned for residential purposes and therefore it is correct to include vacant sites that can provide housing on the register.
- With reference to a permission for housing, this cannot be a reason in itself to remove the site from the register.
- The 2015 Act does not make any allowance for complex negotiations, legal issues or viability of mechanisms for financing development.

6.3. **Further Submissions**

- 6.3.1. The Housing Agency have responded to the planning authority's submission and state that since they are no longer the owners of the site, it would be inappropriate to comment. The Housing Agency go on to state that the lands have been transferred to Dun Laoghaire Rathdown County Council and includes covenants that obliges the Council to construct or cause to construct 155 houses and commence construction no later than 31 March 2019. Further, that the Council have a development

agreement and a 150 year lease is in place with Respond and Tuath Housing to deliver the houses.

The submission is supported by a copy of the Transfer document, Manager's Report regarding the Part 8, maps/plans, description of works and a letter from Tuath and Respond that confirm the above.

- 6.3.2. The Housing Department of Dun Laoghaire Rathdown County Council have also submitted a correspondence that confirms the matters discussed above. In the addition, the Council state that construction is anticipated to commence in January 2019.

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. **Planning Permission**

Firstly, 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.

Whilst I note a planning permission for residential development, albeit a Part 8 permission, no construction activity has taken place on the site. It is for this and other reasons that the site meets the criteria for inclusion on the VSR and the existence of an extant planning permission has no part to play in this instance.

I note that the appellant has drawn the attention of the Board to recent changes concerning the ownership of the site and the obligations of the transfer regarding delivery of housing. In addition, I note the information provided by the Council that states an intention to commence the construction of the 155 units in January 2019. Whilst this information is encouraging it does not alter the outcome, the site was still a vacant site for the relevant period. In any case, section 10 of the 2015 Act, provides for the cancellation of a site on the register subject to notification from the owner to the planning authority that the site is no longer vacant.

7.4. **Vacant/idle**

The appellant has not presented information with regard to any uses associated with the lands under their control. I found the site to be overgrown and it shows no recent or ongoing uses, either agricultural or construction activity. The condition of the site indicates to me that the lands have remained unused for a considerable period of time. I am satisfied that the site is a vacant site for the purposes section 5(1)(a)(iii) of the 2015 Act as amended.

7.5. Housing Need and Site Suitability for Housing

The appellant has not appealed whether there is a need for housing in the area but has questioned the suitability of the site for the delivery of housing. I note that the site is zoned for housing, this suggest that there is a need for housing in the area. I also note that the site has an extant permission for 155 residential units and that there are both recently completed residential developments in the vicinity and ongoing construction activity, this suggests that the site is suitable for housing. I also note the information and data concerning sections 6(4) and 6(5) of the Act, submitted by the planning authority, that demonstrates there is a housing need in the area and the suitability of the site for housing.

I can understand the appellant's contention that the site is somewhat different to a traditional site to be developed in a conventional manner; because the site is subject to a Council objective to deliver a certain type of housing. In the appellant's mind, this renders the site less attractive to a commercially driven developer. Whilst, this could be the case, the 2015 Act does not differentiate between lands that are zoned for residential purposes and residentially zoned lands with objectives to provide 100% social and affordable housing. In my mind, the spirit of the Act is to bring land into beneficial use, in this case deliver housing. In this instance, it is irrelevant that a Development Plan objective attached to the lands is to deliver Council housing as the outcomes of delivering the site into beneficial use would be ostensibly the same.

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 to the Act 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 site is vacant and idle, parts (A) and (B) do not apply. I am satisfied that the site is a vacant site 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.

7.6. Procedural Issues

I note that the site was visited in August 2016 and the Notice confirming that the site had been placed on the register was dated June 2018. The planning authority have presented aerial photography to determine that the site had remained idle for a period greater than 12 months. The appellant has not raised any issue with the condition and use of the site over the relevant period. I am satisfied that the information presented by the planning authority, the absence of any information to the contrary from the appellant and my own observations of the site confirm its inactivity for the relevant time period.

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-0010) was a vacant site for the 12 months concerned. Therefore, the

entry on the Vacant Sites Register on the 27 June 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 a vacant site, the 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 a Part 8 permission for 155 housing units, 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

24 October 2018