



An
Bord
Pleanála

Inspector's Report ABP-302138-18

Type of Appeal	Section 9 Appeal against section 7(3) Notice.
Location	Property at Glencairn View, Murphystown Way, Dublin 8.
Planning Authority	Dun Laoghaire Rathdown County Council.
Planning Authority VSL Reg. Ref.	VS-0045.
Site Owner	Gerard and Margaret Delaney.
Planning Authority Decision	Place on Register.
Date of Site Visit	18 and 23 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 Glencairn View, Murphystown Way, Dublin 8 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 subject site is located on lands close to Glencairn House, a substantial house which is a 19th Century Protected Structure with associated landscaped grounds, gate lodge, boundary walls and portal gateway, on Murphystown Way in Leopardstown. Access to the appeal site is taken from Murphystown Way, across the Luas green line and through a gateway. Glencairn Luas stop is located adjacent to the site.
- 2.2. The site is approximately 0.3 Hectares and contains a converted shed that comprises a family home, currently occupied as such. The greater proportion of the site comprises gardens associated with the house and a proportion of the garden accommodates storage containers and a combination of building materials.

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 within the boundary of the Ballyogan and Environs Local Area Plan, this is yet to be prepared.
- 3.2.2. Section 1.3 of the Development Plan deals with Development Areas and Regeneration.

4.0 Planning History

The site formed a part of the Railway (Dublin Light Rail Line B1 – Sandyford Industrial Estate to Cherrywood) Order 2006. There is no other planning history associated with the site.

5.0 Planning Authority Decision

5.1. Planning Authority Reports

- A **Vacant Sites report** outlining the date of the visit to the site (20 September 2017), 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 September 2017 and was considered to be in the same condition for the preceding time periods (aerial photography) July 2013, June 2016 and May 2017. 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 (no submission was received from the landowner) and a record of the chief executive's order.

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

- 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 property is used as a base for business and post is delivered to this address. A correspondence from the Residential Tenancies Board is included in the submission.

- Meetings with Revenue officials took place in the house on the site during 2014.
- The site provides accommodation for four large transport containers storing building equipment and the lands are used on a daily basis.
- The grounds of appeal (in the form of an affidavit) include a letter from the Residential Tenancies Board, registering a tenancy in Ranelagh dated September 2017 and the Notice issued by the Council.

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 previously accommodated Clonlea House, that was required to be demolished to make way for the construction of the Luas Green Line Extension Work number 20 and 21 detail that Clonlea House and outbuildings as shown on plan to be demolished. Relevant plans detailing the required works have been submitted by the planning authority. It appears to the planning authority that not all buildings were demolished as authorised by the Railway Order.
- The planning authority note that permission has not been granted for the carrying out of a business at this location, including the deposit of transport containers. It is further noted that though the uses on the site may be immune from enforcement action, the determination of a vacant site shall not have regard to unauthorised use.
- The submission is supported by the original VSR Report, an email from the appellant stating the use of the site for business purposes and an A3 plan of Line B1 alignment details.

6.3. **Further Submission**

The appellant has submitted a response to the matters raised by the planning authority and reiterated previous issues, the submission can be summarised as follows:

- An outline of the habitation patterns associated with that of Clonlea House and the conversion of the coach house and stable building for independent living. The coach house building provides a residence and the appellant has included utility bills and interior and exterior photographs of the conversion.
- With reference to the Light Rail Order, the plans associated with the order detail buildings to be demolished. The Delaney's took a High Court appeal and the terms of the settlement were that the coach house would remain in the ownership of the Delaney family. The coach house provided living accommodation for John Boylan's carer and remains a residence to this day. The appellant has included the terms of the High Court settlement, an Irish Times article and the High Court settlement map.
- The appellant considers that their previous grounds of appeal were incomplete and add that the building on the site whilst used as a business address is primarily used as a residence. The containers are situated in the attendant grounds of the house, and house artefacts associated with Clonlea House (now demolished and formerly a protected structure), tools associated with the appellant's business as a landlord. All uses considered as ancillary to the main dwelling house.
- The inclusion of the site on the register is appealed as the site is a home. The appellant cites section 5(2) of the 2015 Act, that defines a site and a home.

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. The appellant states that the converted shed is a home and is set on lands that comprise the gardens associated with the home. In addition, the gardens accommodate storage sheds and materials used in association with the appellant's business as a landlord. The planning authority reject these assertions and state that permission is not in place for the uses described by the appellant and the site should remain on the register.

7.4. Use as a home

7.5. From my observations of the site I would agree with the appellant and their interior photographs submitted with the appeal, that the building on the site is in use as a family home. Whilst the gardens are large, they are associated with the use of the building on the site as a home and are therefore complimentary and part of the overall site. In addition, the storage of some building materials and to a degree the siting of transport containers could at a stretch be considered ancillary to the principle use of the site as a home. The appellant's contention is that the site cannot be considered for inclusion on the register because it is a home, as defined by section 5(2) of the 2015 Act as follows:

“home”, in relation to a person, means a dwelling in which the person ordinarily resides (notwithstanding any periods during which the dwelling is vacant) and includes any garden or portion of ground attached to and usually occupied with the dwelling or otherwise required for the amenity or convenience of the dwelling.

7.6. The appellant's argument may have some validity if the use of the converted shed to a home were a permitted development. I note the appellant has provided

documentary evidence that states, by court order, the retention of the converted shed or coach house was allowed as a settlement of the High Court. In essence, it was agreed that the converted shed was not required to be demolished as part of the construction of the light rail line. However, a court order is not the same as a planning permission and I cannot see that any evidence of planning permission for the conversion of the shed from either the appellant or the planning authority. I can only conclude that planning permission does not exist for the use of the shed as a home and therefore the authorised use of the shed is in question. Section 6(7) of the Act specifically refers to this issue:

In determining for the purposes of this Part whether a site was vacant or idle for the duration of the 12 months concerned a planning authority, or the Board on appeal, shall not have regard to any unauthorised development or unauthorised use.

- 7.7. As I cannot be certain that planning permission exists for the conversion and use of the shed as a home, I would advise the Board that no regard should be had to such use and consequently the site should be considered a vacant site. In addition, I can see no permission for the storage of materials in connection with the trade as landlord or the siting of transport containers on the lands and so these uses should also be disregarded.
- 7.8. **Housing need and suitability**
- 7.9. 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 suggest that there is a need for housing in the area. I also note that 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. There is also a current Strategic Housing Development application on lands adjacent to the site, ABP-302580-18 refers. Finally, the majority of the site is not in use for a purpose that has the benefit of planning permission and that use should be disregarded.
- 7.10. 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.”

7.11. 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 section 7.7 of this report, the site is a vacant site in accordance with section 5(1)(a)(iii)(I) of the 2015 Act because of the uncertainty in relation to authorised uses on the site. 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 a vacant site, 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.

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-0045) 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,
- (d) That the site is a vacant site and though in full use as a residence, such a use may be an unauthorised use that the Board shall not have regard to, and
- (e) The need for housing in the area, the site is suitable for the provision of housing, 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

23 November 2018