



An
Bord
Pleanála

Inspector's Report ABP-302140-18

Type of Appeal	Section 9 Appeal against section 7(3) Notice
Location	Property at Abingdon Park, Shanganagh Road, Dublin 18
Planning Authority	Dun Laoghaire Rathdown County Council
Planning Authority VSL Reg. Ref.	VS-0018
Site Owner	Eileen Fingleton
Planning Authority Decision	Place on Register
Date of Site Visit	12 December 2018
Inspector	Una Crosse

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 referred to as property at Abingdon Park, Shanganagh Road, Dublin 18 on to the Vacant Sites Register (VSR) in accordance with the provisions of section 6(2) of the Urban Regeneration and Housing 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 appeal site has a stated area of 1.42 hectares and registered under VSL reference VS - 0018, has one stated owner, with the Notice issued to Eileen Fingleton on 27 June 2018. The appeal was made on behalf of Eileen Fingleton.

2.0 Site Location and Description

The site which has a stated area of 1.42 hectares is flat and is bounded by mature hedgerow with fencing along the southern boundary. The site is adjoined to the south by a landscaped area and pathway which is within the Rathsallagh housing area. To the west and north west the site is adjoined by a residential development known as Clifton Park and to the east and north east by large dwellings on individual plot which are accessed by a shared narrow laneway from the public road which also accesses the site.

3.0 Statutory Context

3.1. URH ACT

- 3.1.1. The Notice issued under Section 7(3) of the Act states that the PA 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 27th June 2018 and is accompanied by a map outlining the extent of the site to which the Notice relates.
- 3.1.2. Section 5(1)(a) of the Act stated that a site is a vacant site if, in the case of a site consisting of residential land:-
 - (i) the site is situated in an area in which there is a need for housing,

- (ii) the site is suitable for housing, and
- (iii) the site, or the majority of the site, is vacant or idle.

3.1.3. It is noted that Section 5(1)(a)(iii) has been amended by Section 63 of the Planning and Development (Amendment) Act 2018 which commenced upon coming into effect of the Act (19 July 2018). This section of the Act amends Section 5 of the Act of 2015 by substituting Section 5(1)(a)(iii) for the following:

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*”.

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 Authority Decision

4.1. Planning Authority Reports

- A Vacant Sites report was prepared for the site outlining the dates of the visits to the site, the area, zoning and the type of site for the purposes of the Act which in this case is Residential. The location and context of the site is outlined noting that the site is surrounded by mature trees on all boundaries and is relatively flat.
- 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 strategic or significant physical condition or constraint impacting the site which might affect the provision of housing and in conclusion it is stated that the site does appear 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 (23 November 2016) and is considered to have been vacant and idle for in excess of 12 months. Aerial photography dated 21 April 2015, 30 June 2014, 7 December 2013 and 7 June 2013 verifies that the site has been vacant with the site considered to be vacant or idle.
- Site does not have an active use and is currently vacant and idle. Reference is made to the Circular (PL07/2016) which references an interim use of the site for agricultural use but that given purpose of the levy that the site is not being used for the purposes for which it was zoned. It 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.
- It is noted in a report on submissions received dated June 2018 that no submission was received in response to the Section 7(1) Notice.

4.2. **Planning Authority Notice**

Planning Authority decided under section 7(3) to issue a notice on 27th 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. The notice was issued to Eileen Fingleton.

5.0 The Appeal

5.1. Grounds of Appeal

An appeal was received on behalf of Eileen Fingleton which is summarised as follows:

- Guidance Document issued by the Department (PL07/2016) goes much further than the Act in terms of what constitutes a vacant site however such Guidance cannot extend the statutory terms upon which a site can be deemed to be vacant or entered on the Register;
- Reference in the Guidance Document (Circular) to use of site for agricultural purposes (pg 16) however only basis upon which a site can be deemed vacant is as per Section 5(1) of the Act;
- In accordance with rules of interpretation where a term is not defined in a statute, it must be attributed its normal meaning with vacant meaning, in ordinary terms, empty, unoccupied, free, available, not in use, unused etc. and idle meaning not in use, out of use, not working, unused etc.
- Appellants land has been occupied for the relevant period for the purposes of agriculture and contrary to the Guidance a site which is used for the purpose of agriculture is not vacant or idle with clear evidence that appellants land has been leased for agricultural purposes, tenanted, occupied and unavailable, active etc and cannot be considered vacant or idle within the ordinary meaning of the words;
- Guidance (pg 16) to the requirement for full and active use contrary to Section 6(3) of the Act which references for the duration of 12 months with the legislation simple, requiring the land to be vacant in accordance with the ordinary meaning of the term with duration meaning a continuous period;
- Appellants property occupied and used for agriculture for duration of 12 months preceding date of entry on the Register and as testified for upwards of 25 years;
- While a submission was not made within 28 days of proposed entry this does not provide that the Board could refuse to accept to deal with appeal based on any alleged failure to make a submission with a submission made on 3 June 2018

which outlined that site could not be entered with evidence provided that it was not with site entered after this correspondence;

- Supporting document appended to appeal to support fact it is not vacant including copy of Agricultural Licence Agreement relating to the property, Statements from tenant and workers on the site;

5.2. **Planning Authority Response to Appeal**

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

- Outlines that two submissions were received in respect of the proposed entry outside the statutory timeframe;
- Site is located in a well serviced urban location effectively surrounded by low to medium density residential estates and is not a peri-urban fringe site at the very edge of the Dublin Metropolitan area with the site zoned for residential use since at least 1967 and located close to Shankill Dart Station;
- PA considers the site to be optimal for residential development yet it remains underutilised and vacant with serviced residential land a finite resource in the area;
- PA considers purported use of the site for cattle grazing to be completely unsustainable to the long term development of the area and is not the most efficient or effective use of the land with its continued use inhibiting the PA in delivering National and local policy objectives.
- Previous inspection of the site noted it was vacant but noted evidence of previous use for low intensity animal grazing;
- Circular outlines practical matters to consider in identifying vacant sites and references sites not being used for the purpose for which it is zoned with the site zoned for residential but not used for same with the use for grazing cattle not relevant in this instance;
- Also consider that the site is not in full and active use as referenced in the Circular with no evidence on site of any animal accommodation or other farm

infrastructure commonly associated with an active permanent farm holding which highlights the temporary/periodic nature of the animal grazing occurring;

- Noted that the Grazing Licence submitted is dated 2 April 2018, two months after the Section 7(1) notice was issued and reasonable to conclude that Abingdon Park site is not the permanent farm of the lessee but rather a temporary location for occasional/seasonal grazing;
- No evidence to suggest that purported agricultural use of the site is connected to the livelihood of the landowner with the lease a temporary possession of lands with the agricultural use in this instance not considered permanently fixed to the specific lands;
- Reasonably suggested that there are more appropriately zoned locations outside of the built up area that the lessor could utilise for grazing of cattle;
- Planning and Development (Amendment) Act 2018 has amended the definition of a vacant site on residential land with intention of amendment to address situation where developers or speculators hoard land by leasing it or putting it to use for a non-residential purpose such as farming and seeks to protect farmers who have operated the farm prior to the zoning with Circular PL04/18 summarising the new provisions;
- Subject site is zoned for residential use with copy of Dublin Development 1967 Metropolitan Urban Structure Map identifying the lands as primary residential with zoning map for south east suburbs of Dublin County Development Plan 1972 identifying the site as Zone A to preserve and improve residential amenity;
- While appellant states agricultural use ongoing for 25 years, the lands have been zoned for residential development for in excess of 50 years with insufficient evidence available as to when the appellant purchased the property in respect of the residential zoning;
- Burden of showing that the site is or is not vacant or idle in an appeal is on the owners (section 9) with requisite evidence not provided by the landowner;

5.3. Appellants Response to Planning Authority Response to Appeal

A response received from the appellant to the planning authority response to the appeal is summarised as follows:

- Site was entered on Register on 27th June 2018 with 2018 Amendment Act enacted on 19th July with Board required to have regard to the law at time of entering on Register with no provision for Board to undertake a de novo consideration;
- Role of the Board in context of appeals under the 2015 Act is to review decision made by PA and consider if decision made is correct at relevant date notwithstanding that entry is not deemed to take effect until the appeal is finally determined;
- Failure of PA to consider the two submissions made by the appellant prior to entering on Register is a breach or error in the understanding of the PA of its obligations under the Act referring to Section 10(1) and (2) where reference is made to 'if, at any time' with appellant informing PA that site was not vacant prior to its entering the site on the Register;
- Report from PA notes evidence that site may have previously been used for low intensity animal grazing with photographs attached providing evidence of recent farming activity including cattle crushes, fences and feeding troughs with party inspecting land may not be aware that common farming practice to remove animals from land from November to Feb/March;
- Sworn evidence provided that land concerned used for active farming for 25 years with sworn evidence not to be lightly disregarded unless evidence provided that it is incorrect;
- Connection of agricultural use to landowner or granting of temporary possession not relevant considerations under the terms of the legislation where the only matter for the PA to determine is whether or not the site has been vacant for the full duration of 12 months and if it has been used for agriculture in that period then it is not vacant;
- 2018 Amendment Act was not enacted at time decision was made by PA to enter the site on the Register and therefore could not have been lawfully considered by the PA in making its decision nor can the Board;
- Without prejudice to non-application of 2018 Act and while appellant should not have to address same but make the following points;

- Acknowledged that current use and use at date of decision does not consist solely or primarily of housing;
- Most recent purchase of the site was made in 1986/1987 with 2018 Act requiring that if the site is to be deemed a vacant site it must have comprised 'residential' land on the date of last purchase with the relevant date for the establishment of the zoning of the site is January 1987;
- In order to address PA submission sought to investigate the potentially relevant historical zoning and engaged Planning Consultant to clarify same and despite every effort copies of historical development plans were not available with letter attached outlining efforts made;
- PA submission suggests lands may have been zoned for residential development in 1967 & 1972 however quality of the maps upon which they rely is very poor and not possible to identify the subject site with the PA not identifying the site on either map and no text to support objectives attached;
- Pending availability of the historical development plans including text and relevant maps it is not possible for Client to properly address suggestion that the site was zoned at date of last purchase with no evidence presented by the PA in relation to the zoning in 1986/1987;
- Clients recollection was that site was not zoned for residential development at time of last purchase and to comprehensibly address PA submission essential that relevant documents of public record are made available to appellant as through no fault of appellant they are not available and if Board determine that zoning on date of purchase is a relevant consideration respectfully submitted appellant should be allowed to address this matter following making available of the Dublin County Development Plans from 1983 and 1987;
- Definition of residential land in 2015 Act is 'land included by a planning authority in its development plan or local area plan in accordance with section 10(2)(a) of the Act of 2000 with no PA including land in its development plan or LAP in accordance with Section 10(2)(a) of the 2000 Act until that Act was adopted in August 2000 with Section 10 commenced on 1 January 2001 and according to definition of residential land for purpose of the act there could not have been any qualifying land prior to the 2000 Act;

- Accordingly even if subject site was zoned for residential land prior to January 2001 it could not have been zoned in accordance with section 10(2)(a) of the 2000 Act;
- As last date of purchase was 23 January 1987 clear that date of last purchase was before it became residential land, regardless of zoning prior to 1 January 2001, does not come within definition of a vacant site;

6.0 Assessment

6.1. Introduction

- 6.1.1. This 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) by reference to Sections 6(4) & 6(5) of the Act as is required for lands zoned for residential purposes.

Section 5(1)(a) of the Act states that in the case of a site consisting of residential land –

- (i) the site is situated in an area in which there is a need for housing,
- (ii) the site is suitable for the provision of housing, and
- (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*.”

- 6.1.2. I would note that the appellants do not question the need for housing in the area nor do they address the suitability of the site for housing and therefore I do not intend to

address these matters. The appeal and my assessment below will address point (iii) that being whether the site vacant or idle and the purpose of the land. I would however note that in order to comply with Section 5(1)(a) that a site must meet all of the three sections.

6.2. Vacant or Idle and Purpose of the Lands

6.2.1. In relation to the vacancy or otherwise of the site or part thereof, there are a number of considerations. Firstly, as outlined in Section 3.1 above, Section 5(1)(a)(iii) has been amended by Section 63 of the Planning and Development (Amendment) Act, 2018 which provides that it states that 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*.”.

6.2.2. The appellants state that as the amended section 5(1)(a)(iii) was commenced on 19th July 2018 which is after the site was entered on the Register (27th July 2018) that the Board cannot have regard to this amendment as the Board do not carry out a de novo assessment of a Vacant Site Entry. While I note the arguments made by the appellants I would note that Section 5(1)(a)(iii)(I)(B) refers to before, on or after the commencement of *section 63 of the Planning and Development (Amendment) Act 2018* and therefore I consider that the Board must have regard to the legislation in effect at the time of their determination given the Act specifically provides for the time ‘before’ the commencement of the Act.

6.2.3. The appellants claim that the site has been and continues to be used for agricultural purposes. There is documentary evidence to support this claim. I noted on my visit that there were no animals on the site, however given that I visited in mid-December this would be expected. There is however evidence of farm related infrastructure on site including fencing and water troughs. While the argument put forward by the PA

is that it is not being used for the purposes for which it has been zoned, the amendment to the Act does provide that the site can be used for a purpose, which includes agriculture as it is a purpose, and that same is dependent on the purchase of the site and the timing of the zoning. I would note at the outset that the PA acknowledge that the site has been used for some agricultural purpose but states that the site is not being used for the purposes for which it has been zoned would relate to the under-utilisation of the site which is a different matter to that of vacancy which is set out in the Act.

6.2.4. The appellants state that the site was acquired in 1986/1987. I note the maps submitted by the PA in response to the amended Section 5(1)(a)(iii) of the Act which while appearing to suggest that site has been zoned for residential development since 1967 does not pinpoint the site. I agree with the appellants that if these maps are to be relied upon by the Board that greater detail is required. However, as noted by the appellants the timing reflected in the definition of residential land as outlined in the 2015 Act states that residential land is 'land included by a Planning Authority in its development plan or local areas plan in accordance with Section 10(2)(a) of the Act of 2000 with the objective of zoning for use solely or primarily for residential purposes, and includes any structures on such land'. Therefore the date of relevance for the purposes of the Act is not when the lands were first zoned for residential development but is rather when the site was acquired that being prior to or following the commencement of Section 10(2)(a) of the 2000 Act which commenced on 1 January 2001.

6.2.5. I consider that this is a reasonable interpretation of the Act. The appellants have provided documentary evidence that the sale of the site was closed in 1987 which predates 1 January 2001 when it was zoned under the Act and therefore its ongoing agricultural purpose provides it is not a vacant site as defined by Section 5(1)(a)(iii)(II)

7.0 Recommendation

7.1. I recommend that in accordance with section 9(5) of the Urban Regeneration and Housing Act 2015, the Board should cancel the entry on the register of site (VS-0018) property at Abingdon Park, Shanganagh Road, Dublin 18 was vacant or idle

for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 27th June 2018 shall be removed.

8.0 **Reasons and Considerations**

8.1. Having regard to

(a) the information submitted to 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 Inspector, and

(d) that while the site is 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, the most recent purchase of the site occurred prior to its becoming residential land as defined by Section 3 of the Urban Regeneration and Housing Act 2015, and before, on or after the commencement of section 63 of the Planning and Development (Amendment) Act 2018,

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.

Una Crosse
Senior Planning Inspector

December 2018