



An
Bord
Pleanála

Inspector's Report ABP-302156-18

Type of Appeal	Section 9 Appeal against section 7(3) Notice.
Location	Site adjacent to Glencairn House, Murphystown Road, Dublin 18.
Planning Authority	Dun Laoghaire Rathdown County Council.
Planning Authority VSL Reg. Ref.	VS-0004.
Site Owner	Castdale Limited.
Planning Authority Decision	Place on Register.
Date of Site Visit	14 June and 18 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 adjacent to Glencairn House, Murphystown 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 (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 associated with 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 site is taken from Murphystown Way, across the Luas green line and through the portal gateway associated with the house. A second entrance is also taken from Murphystown Way across the Luas Line, slightly south of the main entrance. Glencairn Luas stop is located adjacent to the site and the Luas tracks bound the western portion of the site and include the flanking walls of a bridge abutment as the line crosses the M50.
- 2.2. The site is characteristic of lands associated with a large country house and exhibits a significant number of mature trees in a parkland setting. The lands are not in agricultural use and the grassland areas are overgrown. There are the remains of estate walls at the northern edge of the site. The flatter portion of the site is dominated by a parallel line of mature lime trees, there are also other mature trees that add to the mature character of the overall site. The interior of the subject site is not easily viewed from Murphystown Way, however, glimpses of the site can be had from Orby Way to the south. The boundaries of the site are a combination of high estate walls, topped with security hoarding in places and chain-link fencing topped with barbed wire elsewhere.

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.

The Dún Laoghaire-Rathdown County Development Plan 2016-2022, is the operative Development Plan and contains general policies and objectives in relation to residential amenity standards. The site is subject to zoning Objective A - To protect and/or improve residential amenity'.

The site is also located within the boundaries of an area for which it is intended to prepare the Ballyogan and Environs Local Area Plan - Specific Local Objective 135.

The site is located adjacent to Glencairn House (Protected Structure number 1643) and includes the following: House, Gate Lodge, Outbuildings and Conservatory (Note: Entrance Railings, Piers, Archway and Gates are also Protected Structures).

The ruins of a Castle-Tower House (reference number 023-025) are located on the western boundary of the site.

- 3.2.2. Section 1.3 of the Development Plan deals with Development Areas and Regeneration.

4.0 Planning History

ABP reference ABP-302580-18. Demolition of an existing house and outbuildings. Construction of 243 no. apartments, 98 no. houses and childcare facility. No decision.

PA reference D17A/0913. Permission for the provision of a new single storey dwelling and garage for embassy staff within the existing walled garden, including vehicular access through a new opening in the walled garden; Provision of a new boundary wall for the Ambassador's residence of c. 3 metres in height, with a railing above, on the northern, eastern and part-western boundaries of the application site, and a new security gate entrance with security hut on the existing avenue.

5.0 Planning Authority Decision

5.1. Planning Authority Reports

- A **Vacant Sites report** outlining the date of the visit to the site (28 October 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 October 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 and idle.
- The planning authority's submission is accompanied by the Notice of intent to place the site on the register, the landowner's submission, a Report on the Submissions received in relation to the establishment of the register, a record of the chief executive's order and the section 7 Notice 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)(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 appellant sets out a lengthy preamble to the grounds of appeal, that essentially detail the extent and detail of the design work that has been done to progress a Strategic Housing Development (SHD) application. In addition, the

appellant highlights their commitment to developing the site if permission is granted and outline other sites in the Dublin area where they are on site and constructing housing.

- The site is not suitable for the provision of housing because there are issues that affect the physical condition of the lands. This is due to the number of constraints associated with the site, that include: archaeology, Glencairn House and associated structures (listed on the Record or Protected Structures), architectural heritage, engagement with the occupiers of the neighbouring Glencairn House (the residence of the British Ambassador and staff), biodiversity and Luas crossing. In addition, the appellant sets out in detail why these constraints have placed considerable time delays in terms of putting together a planning application and preparing an Environmental Impact Assessment Report.
- The site is not suitable for housing because it cannot be said that the site can be served by public infrastructure and facilities. Given information received from Irish Water in connection with pre-application consultations with An Bord Pleanála concerning SHD, for the relevant time period and at present there is no public infrastructure to enable housing.

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 planning authority acknowledges the appellants points about the complexities of making a planning application but note that no attempts have been made in the last 18 years to lodge an application for development of the lands.
- The site is suitable for housing, hence the land use zoning and the lodgement of an SHD application to ABP.
- Planning issues to do with the site have been resolved through pre-planning engagement, leading to the lodgement of an application. There are no significant constraints to the development of the land for residential purposes.

- There are no major infrastructural impediments to development of the site.

6.3. Further Submission

The appellant has submitted a response to the matters raised by the planning authority by reiterating the grounds of appeal.

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) and (5) of the Act as is required for lands zoned for residential purposes.

7.3. The appellant's main contention is that the site, for a variety of technical and design reasons, has taken a long period of time to bring to planning stage. Consequently, given the particular circumstances of the lands in question, the site was not suitable for the provision of housing for the period concerned, but it will be. The planning authority response is that any of the difficulties and design challenges of the site could have been overcome at any time, and are part of the normal planning process of bringing a site to development readiness. This the landowner has not done and so the site should be placed on the register.

7.4. 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) 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.

I would note that the appellant does not question the need for housing in the area and therefore I do not intend to address this matter in any great detail. The appeal and my assessment below will address points (ii) and (iii) that being the suitability of the site for the provision of housing and the site being vacant or idle. I would however note that in order to comply with Section 5(1)(a) that a site must meet all of the three sections.

7.5. Housing Need and Site Suitability for Housing

7.5.1. The appellant has not appealed whether there is a need for housing in the area. I note that the site is zoned for housing, this suggest that there is a need for housing in the area. In addition, I note the information and data concerning section 6(4) of the Act, submitted by the planning authority, that demonstrates there is a housing need in the area.

7.5.2. The appellant states in their appeal that the site is not suitable for the provision of housing. The tests to determine suitability for the provision of housing are set out in Section 6(5) of the Act as follows:

A planning authority, or the Board on appeal, shall determine whether or not a site was suitable for the provision of housing for the purposes of this Part by reference to—

(a) The core strategy,

(b) Whether the site was served by the public infrastructure and facilities (within the meaning of section 48 of the Act of 2000) necessary to enable housing to be provided and serviced, and

(c) Whether there was anything affecting the physical condition of the land comprising the site which might affect the provision of housing.

- 7.5.3. In relation to point (a) the appellant states that there are a number of constraints that have made it difficult to develop the lands including, archaeological and architectural heritage, the security concerns of the occupants of Glencairn House (British Ambassador's residence) and the lack of public infrastructure. Despite this, I note that the site is zoned for residential purposes in the current Plan.
- 7.5.4. In relation to point (b) public infrastructure and facilities, the appellant notes that there is difficulty accessing the site across the Green Luas line and that there is an absence of water services on the site. With respect to servicing and accessing these lands, I note that the site can be accessed from a variety of locations from the public road. There may be technical difficulties and design challenges, but these are not insurmountable and the site is not after all landlocked. In addition, the adjacent housing developments avail of water services and it is therefore highly likely that there are no technical impediments to servicing the site.
- 7.5.5. The final point (c) relates to anything which affects the physical condition of the land which might affect the provision of housing. As outlined by the appellant, the principle issue preventing the provision of housing on the lands relates to the security requirements of the occupants of Glencairn House, the archaeological and architectural constraints of the lands are also raised. With respect to the security concerns of the British Ambassador and associated staff, I note that a recent planning application for amongst other things, a new 3 metre high boundary wall and new security entrance, D17A/0913 refers, was granted permission January 2018, not yet implemented. In addition, the appellant has progressed analysis of the heritage items associated with the site, together with the production of an EIAR to support a planning application, these design issues have all now been addressed. This is important because the appellant states that it is the past condition of the site and not the current condition of the site that should be taken into account when deciding to place a site on the register. I note all the points that the applicant has raised in terms of highlighting the physical condition of the site that have hindered their attempts to develop the site. However, all of these issues are factors that might affect any large site on former demesne lands and in my mind would require a greater level of design input to bring forward to planning. Any of the matters mentioned are ones that could have been addressed one, two or ten years ago. Simply put, I do not consider that any of the issues raised by the appellant are factors that affect the physical condition

of the site so as to render it unsuitable for the provision of housing, either now or in the past. This is clearly the case, as the site is currently before the Board as an SHD application.

7.6. Vacant/Idle/Purpose of the Site

7.6.1. As I outline above, I consider that the site is both suitable for housing and that there is a housing need in the area, I also propose to address the third consideration of Section 5(1)(a) which is that the site, or the majority of the site, is vacant or idle or used for a purpose other than housing. As outlined in Section 7.4 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.”

7.6.2. This amendment provides that there are two elements to this Section of the Act (I) which relates to vacant or idle or part (II) which relates to the purpose and zoning of the land. I will address each in turn but I would note that the requirement is to meet one of the parts of this subsection rather than both.

7.7. Vacant/idle

7.7.1. The appellant has stated that the lands in question have been in use by the residents of Glencairn House as passive open space and that a similar case was decided upon by the Board in relation to this type of use, ABP-300531-17 refers. I found the lands to be marginally overgrown on the dates of my site visits. Although, recent activity to do with the maintenance of the grounds had occurred. In my view, it is likely that the wider lands associated with the house and which create a setting and context for the protected structure (Glencairn House) are in use as pleasure grounds for the sole benefit of Glencairn House. The analogy that the appellant draws with

reference to the use of lands by clients of a health service provider is not directly comparable in this instance. However, the use of the land by the occupants of Glencairn House is relevant, in this context, the 2015 Act sets out the meaning of 'site' and 'home' as follows:

“site” means any area of land exceeding 0.05 hectares identified by a planning authority in its functional area but does not include any structure that is a person’s home;

“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.

- 7.7.2. Glencairn House is the residence of the British Ambassador to Ireland, it is also a protected structure listed on the Record of Protected Structures (RPS) of the Dun Laoghaire Rathdown County Development Plan. It is relevant that Glencairn is listed on the RPS, as the listing provides a basis of what might be considered to be the curtilage and attendant grounds of the house. I note that the Vacant Site Levy boundary does not extend to Glencairn House itself, but includes lands within the former demesne walls. The attendant grounds around a country house, such as Glencairn House were often moulded into a coherent landscaped entity in accordance with the aesthetic and economic ideas of the time. I mention this only to ascribe what might be considered a reasoned assessment of what lands were and are meant to be required for the amenity or convenience of the dwelling, in this case Glencairn House. The 2015 Act does not state the area of land that might be attached to a dwelling, it could be small or large, depending on the dwelling. In this instance, I am satisfied that the lands surrounding Glencairn House are required for the amenity or convenience of the dwelling and not therefore vacant. I am satisfied that the site is not a vacant site for the purposes section 5(1)(a)(iii) of the 2015 Act as amended.
- 7.7.3. It is not clear from the documentation on file the exact time period that the appellant has occupied the site. So, it is difficult to ascertain if the appellant is hoarding the land, the primary purpose of the Act of which is to counteract. It may therefore be

possible that the site was not zoned for residential purposes at the time of the occupation of the site by the appellant. The Board may wish to investigate this matter further, however, as I outline above in respect of Section 5(1)(a)(iii)(I) I do not consider that the site is vacant or idle.

7.7.4. In this regard, the site does not meet the tests for vacant or idle use outlined in Section 5(1)(a)(iii)(I) and the Notice should be cancelled.

7.8. Procedural Issue

7.8.1. The Board may wish to note that I have referred to a site visit that took place before the appeal was lodged. This is simply to avail of images and observations I obtained from a pre-application consultation for SHD with the Board on the same site, ABP-301715-18 refers, and now forms part of a current SHD application.

8.0 Recommendation

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 the site (VS-0004) adjacent to Glencairn House, Murphystown Road, Dublin 18, was vacant or idle 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) That the site was not a vacant site, by virtue of the fact that the site comprises lands considered to be attached and included as a person's 'home' and that the lands concerned are required for the amenity or convenience of that dwelling.

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.

Stephen Rhys Thomas
Planning Inspector

11 December 2018