



An
Bord
Pleanála

Inspector's Report ABP-303239-18

Type of Appeal	Section 9 Appeal against section 7(3) Notice.
Location	Lands adjacent to Saint Anne's, Upper Dargle Road, Bray, County Dublin.
Planning Authority	Dun Laoghaire Rathdown County Council.
Planning Authority VSL Reg. Ref.	VS-0014.
Site Owner	Visdon Ltd.
Planning Authority Decision	Place on Register.
Date of Site Visit	22 February 2019.
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 Lands adjacent to Saint Anne's, Upper Dargle Road, Bray, 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)(a) and 5(2) of the URH Act 2015

2.0 Site Location and Description

- 2.1. The subject site is located on lands adjacent to the M11 on the western suburbs of Bray, in the county of Dublin. A minor road links Upper Dargle Road with the Hazlewood Estate and runs along the eastern boundary of the site. A watercourse is located along the southern boundary of the site. There are apartment buildings to the east of the site and terraced housing located to the north east.
- 2.2. The site generally falls from the north down to the Upper Dargle Road. For the most part the site is grassed, but there are significant areas of the site that are overgrown and subject to severe gradients. The boundaries are made up of mature hedgerows and palisade fencing in places. A significant shelter belt of trees borders the site along the M11 motorway. A small number of ponies were grazing on the site.

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 12 December 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. A six year motorway proposal runs along the western boundary of the site along the M11.
- 3.2.2. In Dún Laoghaire-Rathdown all lands that are identified in the County Development Plan 2016-2022 with either zoning Objective A (to protect and/or improve residential amenity) or A2 (to provide for the creation of sustainable residential neighbourhoods and preserve and protect residential amenity) are considered residential lands for the purpose of the 2015 Act.
- 3.2.3. Section 1.3 of the Development Plan broadly outlines the Council aims and policies with regard to Development Areas and Regeneration.

4.0 **Planning History**

PA reference D07A/1471. Permission for 91 residential units.

PA reference D09A/0004. Permission to amend D07A/1471 by the addition of 29 residential units.

5.0 **Planning Authority Decision**

5.1. **Planning Authority Reports**

- A **Vacant Sites report** outlining the date of the visits to the site (22 November 2011 and 29 August 2018), the site area (1.7 Hectares), 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. The site was purchased in 2017 and was zoned residential before that date.
- 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 a 3-bed house average monthly rent is €2,612 (October 2018) and average purchase price is approx. €567,110 (October 2018); (c) approx. 4,484 households qualified for

social housing support (September 2018); (d) 1,225 properties for sale (October 2018) 383 properties for rent (October 2018) which is 1.85% of the 86,962 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 the 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 two site inspections November 2016 and August 2018 and was considered to be in the same condition for the intervening time period. It is considered that the site is vacant and has been vacant for a period beyond twelve months. In addition, the lands were zoned for residential purposes prior to the purchase of the site 2017 and therefore complies with section 5(1)(a)(iii)(II) of the 2015 Act as amended.
- 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 maps, colour photographs, 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 submission was received from the landowner), the VSR table, 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 12 December 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 is currently in the process of preparing a planning application in the first quarter of 2019 through the SHD process and a design team has been engaged.
- The appellant is part of the Durkan Group of companies, whom have a track record of delivering housing not land hoarding.
- The site was sold as a 'distressed asset' and the subject of a 'receiver sale'. The appellant bought the site in the believe that any site issues could be resolved and housing delivered.
- The lands had the benefit of planning permissions (D07A/1471 and D09A/0004), but could not be implemented due to economic issues.
- An issue of an over staying tenant has been resolved.
- The site is not suitable for the provision of housing due to excessive gradients on the site and the adjacency of the M11. This has meant considerable design input to ensure the viability of any development.
- The lands are currently being developed to provide housing and so the site has not been vacant or idle.

The grounds of appeal include a sales brochure for the site, a sketch layout plan, detailed layout plans, site survey, correspondences and the Notice and map 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 has been zoned residential since the DLRCC Development Plan 2004.

- There is a need for housing in the area and the site is suitable for housing, as referenced by the earlier submission, despite the appellants contentions to the contrary.
- The site has been consistently vacant or idle for some time. The appellant purchased the site in 2017 at which time the site had and continues to be zoned residential.

The submission is supported by the original VSR Report and County Development Maps (Map 14).

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:

- The appellant states that they are not contending that their lands are not suitable for housing. It is just that there are considerable constraints that require greater design inputs.
- Land hoarding is not taking place and the lands are not idle. A considerable amount of design work is taking place to prepare a submission in relation to the SHD process.

7.0 Assessment

7.1. Introduction

- 7.1.1. An appeal under 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 County Council VSR on the 12 December 2018.
- 7.1.2. The Notice has been issued under the provisions of Section 5(1)(a) and (2) of the Act. The assessment undertaken by the Planning Authority to inform the placement

of the site on the Register, which I outline in section 5.1, refers to the tests included for residential lands 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.

- 7.1.3. The appellant states that the lands were purchased with a view to providing residential development and design work has been ongoing in this respect. The site is therefore not vacant or idle. The site is difficult to design for because of various constraints and this requires greater design inputs. The planning authority reject these assertions and state that there is a housing need in the area, the site is suitable for housing and that the site is and was vacant in accordance with the terms of section 5(1)(a)(iii)(II) of the 2015 Act as amended.

7.2. **Vacant/Idle**

- 7.2.1. Section 5(1)(a)(iii) states 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.

- 7.2.2. This section of the 2015 Act seeks to clarify the purpose or use of a site in connection with any change in ownership. The Board should note that the relevant period that concerns this appeal and for the purposes of the 2015 Act falls either side of the 19 July 2018 enactment date of the Planning and Development (Amendment) Act 2018. The appellant states that they acquired the site in November 2017 and so they have been the owners of the site for at least 12 months prior to the site being entered on the register. I am satisfied that the appellant is in a position to account for any uses that may have occurred on the site during the relevant time period.
- 7.2.3. The appellant contends that the preparation of a planning application, all the necessary survey work required and the resolution of tenant issues should render a

site as in 'use' and not idle or vacant. The design process has been ongoing since the purchase of the site, it is stated.

- 7.2.4. The 2015 Act does not state the types of use that should be considered to lift a site from being vacant or idle. However, section 6(7) of the Act states:

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.

- 7.2.5. It is clear that any unauthorised development or unauthorised use should not be considered for the purposes of the Act. In my mind, the Act's references to development and use depends upon a close relationship with the meaning of these words in the Planning and Development Act 2000 (as amended). Consequently, the definitions of 'development' and 'use' are helpful and serve to illustrate how a site should be assessed in terms of the vacant or idle status. I am not satisfied that the design process leading to a planning application or even on-site survey work could be considered as development or use in terms of the 2015 Act. The appellant's case that the site is not vacant or idle because of the exercise of preparing a planning application cannot be considered as meaningful use for the site so as to remove it from the register.

- 7.2.6. On the day of my site visit I noted a small number of ponies grazing on the site and this accords with the planning authority's observations in August 2018. The appellant makes no mention of the use of the site for equine grazing and does not rely on such a use in the grounds of appeal. I can only conclude that the livestock were and are not in the appellant's ownership and that they do not wish to rely on it as a permitted use of the site. The Board may wish to consider the matter further, however, the current situation may be an ongoing state of affairs between landowner and tenant. In any case, the most recent purchase of the land (2017) occurred after the site became residential land and before the commencement of section 63 of the Planning and Development (Amendment) Act 2018. The site is a vacant site in accordance with section 5(1)(a)(iii)(II) of the 2015 Act.

7.3. **Housing need and suitability**

- 7.3.1. The appellant has not appealed the need for housing in the area, but has tangentially questioned if the site is suitable for housing. The site has a cross slope and there are significant areas subject to severe gradients, in addition the site is close to the M11 motorway, where noise could be an issue. However, I note that there are both older and recently completed residential developments in the vicinity and this suggests that the site too, is suitable for housing. I also note that the site had the benefit of planning permissions for residential development. In addition, the appellant has started the design process to prepare a residential planning application and this all points to the suitability of the site for the provision of housing. I note the information and data concerning sections 6(4) and 6(5) submitted by the planning authority, that demonstrates there was and is a housing need in the area and the suitability of the site for housing. I am satisfied that the site meets the tests outlined in sections 6(4) and 6(5) of the 2015 Act.
- 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 am satisfied that the site was and 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

- 8.1. 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-0014) lands adjacent to Saint Anne's, Upper Dargle Road, Bray, County Dublin, was a vacant site for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 12 December 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) The absence of any evidence to suggest that the site was in use for a particular or stated purpose, and
- (e) that while the site may have been in use 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 after it became residential land, and before, on or after the commencement of section 63 of the Planning and Development (Amendment) Act, 2018,

the Board is satisfied that the site was a vacant site for the relevant period.

Stephen Rhys Thomas
Planning Inspector

01 March 2019