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Bord  
Pleanála

## Inspector's Report ABP-303388-19

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<b>Type of Appeal</b>	Section 9 Appeal against section 7(3) Notice.
<b>Location</b>	Site adjacent to the entrance of White Oaks, Roebuck Road, Clonskeagh, Dublin 14.
<b>Planning Authority</b>	Dun Laoghaire Rathdown County Council.
<b>Planning Authority VSL Reg. Ref.</b>	VS-0074.
<b>Site Owner</b>	Klassder Limited.
<b>Planning Authority Decision</b>	Place on Register.
<b>Date of Site Visit</b>	10 April 2019.
<b>Inspector</b>	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 the entrance of White Oaks, Roebuck Road, Clonskeagh, Dublin 14 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 in Clonskeagh, a suburb of Dublin City in the functional area of Dun Laoghaire Rathdown County Council. The site is accessed from the entrance road to White Oaks estate, via steel railing gates. The site is rectangular and elongated in shape, level and bound by a concrete block wall on the south western and south eastern boundary. The north eastern boundary comprises a wire chain-link fence. A car wash enterprise is located to the north east of the site and housing surrounds the remainder. The site accommodates a number transport containers and is surfaced with tarmacadam.

## **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.

### **3.2. Development Plan Policy**

- 3.2.1. 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’.

- 3.2.2. 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

Subject site:

None.

Adjacent site:

Planning Authority reference number - **D13A/0493**. Eight houses. January 2014.

## 5.0 Planning Authority Decision

### 5.1. Planning Authority Reports

- A Vacant Sites report outlining the date of the visit to the site (16 October 2018), 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 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 the site inspection 16 October 2018, aerial photography from 2018, 2017 and 2016 (Google Earth) and the site was considered to be in the same condition for the relevant time period. 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 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 not 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 site was not vacant and has been in use for access purposes and parking since 1970. In recent times it has been used for temporary storage of office units, Google photos are submitted for 2008, 2014 and 2018.

- The site is not suitable for housing, it is impeded by a Right of Way (ROW), documented 13 May 1970 between HF Murray and Anthony v Moran and again in conveyance documentation 1982, documentation submitted. The ROW over all the land was in the benefit of Moran Insulations Limited. Over the years a number of parties have acquired portions of the title and the rights and obligations over the land. As of August 2018, Klassder Limited has confirmation from the Land Registry that an appurtenant right over the land (folio 68294F) has been removed.

## 6.2. **Planning Authority Response**

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

- The site has operated as a car park/access way since 1970 for a number of uses adjacent to the site. In 2014 an adjacent site was developed and a boundary wall erected. The was in use during this construction period of the adjacent site as a compound. The construction of the adjacent site was completed in 2015 and the subject site became disconnected and standalone, PA reference D13A/0493 refers. Since then the site has remained vacant and entry barred by a locked gateway. The site does not have a permission for a standalone use, such as a car park. The use of storing office accommodation during the relevant period, does not have the benefit of planning permission either.
- The site is suitable for housing, and legal impediments are not within the scope of the URHA 2015.

Subsequently the planning authority submitted the planning documentation with regard to PA reference D13A/0493.

## 6.3. **Further Submission**

The appellant has submitted a response to the matters raised by the planning authority by reiterating the grounds of appeal. In addition, the appellant disputes that the use of the site for car parking/access withered when an adjoining site became detached. Without clear title to the land, no housing can be built on the site. The site is not suitable for housing with reference to the planning authority's VSR report, there is a constraint that affects the site.

## 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 legal reasons concerning rights of way is not suitable for housing and that the site has in fact been in use continuously for a variety of purposes such as car parking and access. The planning authority dismiss legal issues as a bar to placing the site on the register and raise uncertainty about planning permission for the uses stated for the site.

### 7.4. Vacant/Idle

7.4.1. 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.*

7.4.2. This section of the 2015 Act clarifies the purpose or use of a site in connection with any change in ownership and zoning. The appellant has put forward the case that the site has been in continuous use for access and car parking since the 1970s. For the period prior to the placement of the site on the register, the site was in use for storing temporary office equipment. The appellant supports their position by the use of photographic data available online, Google images. The position as to whether the

site was a vacant site for the relevant 12 month time period, is reinforced by the planning authority, also with the use of third party online data.

- 7.4.3. The relevant time period is a fundamental factor and one upon which the 2015 Act is quite plain in its interpretation, section 6(2) states as follows:

*A planning authority shall enter on the register a description, including a map, of any site in its functional area which was, in the opinion of the planning authority, a vacant site for the duration of the 12 months preceding the date of entry.*

- 7.4.4. All other sections pertinent to this appeal refer back to the 12 month period. In this instance, the planning authority entered the site on the register on 12 December 2018, having conducted their only site visit on the 16 October 2018, less than two months prior to the date of entry on the register.
- 7.4.5. The planning authority have relied on Google Street View images and Google Earth satellite imagery over various time periods, including the relevant 12 month period to illustrate the condition and status of the site. The appellant for their part, has also relied upon online data to illustrate that the site was in use. I do not accept the use of third party online data as a suitable form of evidence to determine the use or condition of a site. I consider it unwise to rely on photographic evidence that cannot be verified by the planning authority or the appellant, useful though it may be. I would also advise the Board not to rely on online photographic data upon which to base their determination either. For these reasons, I am not satisfied that the relevant time period had elapsed and the site should not have been placed on the register for that single reason.
- 7.4.6. As to the actual use of the site for a variety of purposes over time, this may well be the case. But, I have not seen any first hand photographic evidence to conclusively demonstrate the case either way. In addition, there is some contention as to the car parking, storage and access uses on the site and whether permission has been granted. Neither, the planning authority or the appellant has satisfactorily demonstrated to me the planning status of the use or not of the site.
- 7.4.7. In any case, I am not satisfied that the relevant time period has elapsed in order to allow a reasonable assessment of the site's condition in terms of a use or purpose. For this reason alone the site should be removed from the register. This does not

preclude the planning authority from recommencing the process and implementing the 2015 Act in terms of allowing the requisite 12 month time period to elapse.

## 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 due to legal impediments to develop the site. 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) and (b), I note that the site is zoned for residential purposes in the current Plan and that housing development has recently been completed on the adjacent site.

7.5.4. 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 legal constraints, principally rights of way of others over the entire site. I concur with the planning authority on their point, there is no remedy in the 2015 Act that concerns legal issues as a factor that might affect the physical condition of the land. However, the appellant raises an interesting anomaly, that there may be a legal stop to developing the lands from third parties that have rights of way. To return to the 2015



Act, there is nothing that I can see that affects the physical condition of the land to affect the provision of housing. Legal issues are matters that can be addressed by interested parties at any time and do not in themselves preclude agreements either to develop the lands or put them to a use.

- 7.5.5. In terms of the need for housing in the area and the suitability of the site for housing I am satisfied that all the tests required by section 6(4) and (5) are met. The site is and has been for some time suitable for housing and satisfies a housing need recognised and adequately described by the planning authority. However, as outlined above, I am not satisfied that the site has been entered on the register in an appropriate manner. The landowner has been disadvantaged because the relevant time period of 12 months has not been allowed to elapse. It is this procedural error that in my mind requires the site to be removed from the register.

## **8.0 Recommendation**

- 8.1. I recommend that in accordance with section 9(5) of the Urban Regeneration and Housing Act 2015, the Board should cancel the Notice stating that the site at the entrance to White Oaks, Roebuck Road, Clonskeagh, Dublin 14 was a vacant site for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 12 December 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) The site could not have been a vacant site within the meaning of section 5(1)(a) of the Urban Regeneration and Housing Act, 2015, as amended, for the reason that the assessment of the site did not account for the duration of the 12 months preceding the date of entry on the register in accordance with

section 6(2) of the 2015 Act, and the Board is not satisfied from the evidence on the file, that the site was a vacant site for the relevant period, 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.

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Stephen Rhys Thomas  
Planning Inspector

12 April 2019