



An
Bord
Pleanála

Inspector's Report ABP-303472-19

Type of Appeal	Section 9 Appeal against Section 7(3) Notice
Location	Site at Old Glenamuck Road, Carrickmines, Dublin 18.
Planning Authority	Dun Laoghaire Rathdown County Council
Planning Authority VSL Reg. Ref.	VS-0060
Site Owner	Madeline Collins
Planning Authority Decision	Place on Register
Date of Site Visit	1 st August 2019
Inspector	Sarah Moran

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 Old Glenamuck Road (Golf Lane), Carrickmines, Dublin 18 onto the Vacant Sites Register 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 2015 Act.
- 1.2. The appeal site registered under VSL reference VS - 0060, has one stated registered owner, Madeline Collins.

2.0 Site Location and Description

- 2.1 The subject site is located in the established residential area of Carrickmines, Dublin 18. The site is immediately adjacent to the M50 Junction 15 Carrickmines Interchange to the north and close to the Carrickmines Retail Park to the northwest. Ballyogan Luas stop is c. 1 km from the site. The site is accessed via Golf Lane off the Glenamuck Road South and is opposite the Blackberry Hill housing development. It has a stated area of c. 0.23 ha. There is a hoarding along the road frontage and the site is undeveloped and occupied by a substantial amount of mature trees and other vegetation.

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 2015 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 12th December 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 states 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.

Section 63 of the Planning and Development (Amendment) Act 2018 amends section 5(1)(a)(iii) of the Act of 2015 by substituting it 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”.

3.1.3. Section 6 of the Act provides for the establishment and maintenance of a Register of Vacant Sites. Section 6(2) provides:

“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.”

Section 6(4) provides that a planning authority, or the Board on appeal, shall determine whether or not there was a need for housing in an area within the planning authority’s functional area for the purposes of this Part by reference to—

- (a) the housing strategy and the core strategy of the planning authority,
- (b) house prices and the cost of renting houses in the area,
- (c) the number of households qualified for social housing support in accordance with section 20 of the Housing (Miscellaneous Provisions) Act 2009 that have specified the area as an area of choice for the receipt of such support and any changes to that number since the adoption of the planning authority’s development plan, and

(d) whether the number of habitable houses available for purchase or rent was less than 5 per cent of the total number of houses in the area.

Section 6(5) provides that 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.

3.1.4. Section 9 relates to appeals against entry on the register of vacant sites. Section 9(2) provides:

“On an appeal under this section the burden of showing that the site, or a majority of the site, was not vacant or idle for the duration of the 12 months concerned is on the owner of the site.”

3.1.5. Circular PL 7/2016 ‘RE: Implementation of the Vacant Site Levy as provided for in the Urban Regeneration and Housing Act 2015’ by the Dept. of Environment, Community and Local Government provides guidance on the above.

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 relevant development plan map indicates an objective ‘To protect and preserve Trees and Woodlands’ relating to the subject site. Part of the site is located within the Cherrywood SDZ, which relates to road improvements to the south of the site (proposed Kilternan Link Road). The site is within the buffer zone of several Recorded Monuments.

4.0 Planning History

4.1. D15A/0530

- 4.1.1. Permission granted for a dwelling to accommodate main living accommodation and a Granny Flat, to use existing site entrance off the Old Glenamuck Road, new boundary fencing and associated landscape works.

4.1 Planning Authority Decision

4.2. Planning Authority Reports

- 5.1.1 A Vacant Site Report was prepared for the site outlining the dates of the visits to the site, description of the area, zoning, planning history and the type of site for the purposes of the Act. The site is zoned for residential development and the site is considered with regard to the provisions of section 5(1)(a), i.e. residential land.

- 5.1.4 In terms of need for housing (tests outlined in Section 6(4)) it is stated that in terms of:

(a) Having regard to the Core Strategy and Housing Strategy set out in the County Development Plan, 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 residential unit, average monthly rent is €2,612 (October 2018) and average purchase price is approx. €567,110 (October 2018).

(c) Approximately 4,484 households qualified for social housing support (September 2018).

(d) 1,225 properties for sale and 383 properties to rent (October 2018) which is 1.85% of the 86,962 housing stock

with the assessment noting that having regard to the criteria and to the continual increase in demand for housing, that it is considered there is a need for housing in accordance with Section 6(4) of the Act.

- 5.1.3 In terms of suitability for housing (tests outlined in Section 6(5)):

- (a) As site is zoned for housing it is considered suitable for housing.
- (b) The site is served by public infrastructure and facilities necessary to enable housing to be provided and serviced.
- (c) There does not appear to be any strategic or 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.

5.1.4 In relation to the majority of the site being vacant or idle for the last 12 months, it is stated that a site inspection on 29th August 2018 found the site to be vacant and heavily overgrown, photos are submitted. Aerial photography dated 24th June 2018 and 7th May 2017 verifies that the site has been vacant and idle for a period in excess of 12 months.

5.1.5 The report concludes that the site does not have an active use and is currently vacant and idle. Under the provisions of Section 5 of the Urban Regeneration and Housing Act 2015 (as amended), it is considered that this site consists of 'residential land' and is a 'vacant site'.

4.2.1. The current site owner, Madeline Collins, made a submission to the planning authority in December 2018 submitting that the site has permission for a one-off house (Reg. Ref. D15A/0530). The land was bought to build a family home and the design of the house is based on the special needs of both occupants. The owner intends to build the house in the near future. The site was never intended as an investment. The permission granted includes a large development contribution that put the house project over budget. As such, the dwelling will be constructed at a time when it is financially sensible to do so. The planning authority noted that Appendix 3 of Circular PL 7/2016 provides guidance in relation to sites with an extant planning permission, that the levy is to be applied in such instances if it meets the relevant criteria. The site owner also noted the development plan objective relating to the protection of woodland at the site, however the planning authority considered that the specific characteristics of the site do not fundamentally undermine the principle of developing the site for residential purposes.

4.2.2. Under the provisions of Section 5 of the Urban Regeneration and Housing Act 2015 (as amended), the planning authority considered that the site is vacant / idle as per section 5(1)(a)(iii) (as amended), consists of 'residential land' and meets the criteria

for sections 5(1)(a)(ii) and (iii) with regard to the tests set out in sections 6(4) and 6(5) and therefore is a 'vacant site' as per section 5(1)(a) of the 2015 Act.

5.2 Planning Authority Notice

5.2.1 The planning authority decided under Section 7(3) to issue a Notice on 12th December 2018 referencing Sections 5(1)(a), 5(2) and Section 6(2) of the Act and stating that the site has been entered onto the Vacant Sites Register. The notice was issued to Madeline Collins.

5.0 The Appeal

5.1. Grounds of Appeal

5.1.1. The appeal received from Madeline Collins on 28th January 2019 may be summarised as follows:

- The site was bought by the current owner's parents in the 1970s with the intention of constructing a home and was never intended as an investment.
- The owner currently has permission for a family home at the site. Two previous historic applications at the site were refused permission.
- The house permitted at the site has been designed to meet the special needs of its intended occupants.
- There are several development constraints at the site which increase the complexity of the development, i.e. sound mitigation due to proximity to the M50; archaeology due to proximity to Carrickmines Castle; Cherrywood SDZ; presence of rare trees and woodland and development plan objective to protect same.
- The appeal submission includes 'A Report on the Flora and Fauna of a Site Area on the Old Glenamuck Road, Carrickmines, Dublin 18' dated 2nd November 2015, Archaeological Assessment dated 17th July 2015 and Arboricultural Report dated 11th August 2015, which were prepared in support of the application Reg. Ref. D15A/0530.
- The permission at the site includes a condition requiring a substantial

development contribution associated with Luas works. This has impeded the owner's plans to proceed with the permitted development.

- The appellant has health issues and personal circumstances which have also delayed the application process.

5.2. **Planning Authority Response**

6.2.1 The response of Dun Laoghaire Rathdown County Council refers the Board to the Vacant Site Report and Report on Submission Received on file, as summarised in section 5.1 above. The planning authority has considered the appeal and is of the opinion that no new matters of significance have been raised that merit further comment.

6.3 **Appellant Response to Planning Authority Submission**

6.3.1 In the particular circumstances of the Planning Authority response to this appeal the Board sought a response from the appellant. A response was received on 11th March 2019. This reiterates points made in the original appeal in relation to the original purchase of the site and to the delays in proceeding with the permitted one off house at the site. The following points are also noted:

- The development permitted under D15A/0530 was designed to result in the removal of as few trees as possible at the site.
- There is a possible CPO at the road frontage of the site and the proposed entrance was designed to facilitate this.
- Rubbish present in the photographs on file is located on land previously CPO by the council.
- It is submitted that Vacant Site Levies are punitive towards families that own sites and have a long standing connection with the area.

6.0 **Assessment**

6.1. The following matters are to be considered in this Appeal against Notice of Entry on Vacant Site Register, with regard to the relevant legislation as set out above, i.e. sections 5(1)(a) (as amended), 6(4) and 6(5) of the 2015 Act:

- Is the site situated in an area in which there is a need for housing?

- Is the site suitable for housing?
- Is the site, or the majority of the site, vacant or idle?

These matters may be considered separately as follows.

6.2. Is the site situated in an area in which there is a need for housing?

- 6.2.1. The appeal does not contest the issue of whether there is a need for housing in the area. I note the information and data concerning section 6(4) as submitted by the planning authority that demonstrates that there is a housing need in the area.

6.3. Is the site suitable for housing?

- 6.4. This matter is not contested in the appeal. Neither the 2015 Act nor Circular PL 7/2016 refer to how the suitability of the site for housing is to be determined. The subject site is zoned for residential development under the County Development Plan. It is located in an established urban area in close proximity to good public transport connections and partially within the Cherrywood SDZ. I consider that the development of the site is entirely consistent with the provisions of the development plan core strategy. It is considered to be suitable for housing on this basis. While I note the development plan objective 'To protect and preserve trees and woodlands' relating to the subject site, this would not preclude residential development and is not considered to be a material consideration as to whether it is suitable for housing.

6.5. Is the site, or the majority of the site, vacant or idle?

- 6.6. The appellant submits that there is an extant permission for a one off dwelling at the site. No site works have taken place that might be deemed to constitute development. The appellants intend to build the permitted dwelling but commencement has been delayed for various reasons, as summarised above. I note the following statement in Appendix 3 of Circular PL 7/2016:

“Where a vacant site has an extant planning permission associated with it, this should not be a consideration in determining whether to apply the levy. If such a site meets the criteria for a vacant site in respect of either residential or regeneration land, then the levy may be applied.”

The appellant has not yet progressed the permitted development and there is no provision in the legislation to prohibit the entry of a vacant site onto the Vacant Sites Register on the basis that a planning application for its future development may be

imminent. The 2015 Act is only concerned with the actual use on site and whether it is performing a specific purpose in order to determine if a site is vacant/idle.

6.7. Section 63 of the Planning and Development (Amendment) Act 2018 amends section 5(1)(a)(iii) of the Act of 2015 by substituting it 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”.

I also note the following advice in relation to section 63 as provided in Appendix 1 of circular letter PL 04/2018, issued by the Dept. of Housing, Planning and Local Government on foot of the 2018 Act:

“This provision differentiates between lands purchased following a zoning change to residential and lands held in ownership regardless of zoning, such as those long held and operated as farms. Therefore, its aim is to focus on developers or speculators who have purchased residentially zoned and serviced lands but are not bringing those lands forward for development for that purpose. However, it confirms that lands owned and in use prior to being rezoned to residential (i.e. for agricultural purposes), and which continue in such use shall not be regarded as “vacant or idle” for the purposes of the levy and are therefore not liable to the levy.”

The appellant submits that the site was originally purchased by her parents in the 1970s and states that the land was placed in her name in the 1990s, i.e. prior to the commencement of section 63 of the 2018 Act. It is unclear how long the subject site has been zoned for residential development, i.e. when it became residential land. Section 5(1)(a)(iii)(II) would apply if the site was acquired by the appellant prior to its zoning for residential development. Therefore, the site would not come within the definition of a vacant site as per section 5(1)(a) of the 2015 Act.

6.8. The site must have been vacant for the duration of the 12 months preceding the date of entry on the Register as per section 6(2) of the 2105 Act. The planning authority entered the site on the Register in December 2018, based on its site inspection on 29th August 2018 and on aerial photography (Google Earth) dated 24th June 2018 and 7th May 2017, also street view images (again Google Earth) dated August 2018 and April 2017. Appendix 3 of Circular PL 7/2016 states:

“Local authorities are advised that they should maintain appropriate records, including photographic evidence, as necessary, to support their finding that a site was vacant for the necessary period.”

In this case, the planning authority has not provided photographic evidence that the site was visited at the beginning of the 12 month period. The provision of third party online data is not considered as a suitable form of evidence to determine the use of the site. The planning authority therefore has not provided satisfactory evidence that the site was vacant for the 12 months predating its entry on the Register.

7.0 Conclusion

7.1. I am satisfied that there is a need for housing in the area of the subject site as per section 6(4) of the 2015 Act and that the site is suitable for the provision of houses as per section 6(5). Having regard to my site inspection and to the photographic evidence on file, I am satisfied that the site is currently vacant / idle and was vacant / idle when the planning authority carried out its site inspection on 29th August 2018. However, the planning authority has not submitted satisfactory photographic evidence that the site was vacant in the 12 month period preceding the date of the site's entry on the Register in December 2018. The site should therefore 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. It should also be noted that the site may not come within the scope of the definition of a vacant site as per section 5(1)(a) of the 2015 Act (as amended), if it was purchased by the current owner prior to its zoning for residential development, as discussed in section 6.7 above.

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 cancel the Notice stating that the site located at Old Glenamuck Road, Carrickmines, Dublin 18 was a vacant site for the 12 months concerned. There, the entry on the Vacant Sites Register on the 17th December 2018 shall be removed.

9.0 Reasons and Considerations

- 9.1 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)(b) 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 it appropriate that a notice be issued to the planning authority to cancel the entry on the Vacant Sites Register.

Sarah Moran
Senior Planning Inspector
11th September 2019