



An
Bord
Pleanála

Inspector's Report ABP-303486-19

Type of Appeal	Section 9 Appeal against Section 7(3) Notice
Location	Site between Murphystown Way and the M50, Murphystown Way, Dublin 18
Planning Authority	Dun Laoghaire Rathdown County Council
Planning Authority VSL Reg. Ref.	VS-0013
Site Owner	George Maloney (Receiver)
Planning Authority Decision	Place on Register
Date of Site Visit	3 rd of May 2019
Inspector	Erika Casey

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 site between Murphystown Way and the M50, Murphystown Way, Dublin 18 onto 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 registered under VSL reference VS - 0013, has one stated registered owner, George Maloney (Receiver).
- 1.3. The Board should be aware that there is appeal against a Section 7(3) Notice on the adjoining site – appeal reference 303563-19.

2.0 Site Location and Description

- 2.1 The subject site has an area of c. 1.75ha and is located approximately 9km to the south of Dublin City Centre in the administrative area of Dun Laoghaire Rathdown County Council. It is located directly to the east of Junction 14 of the M50 and south of the M50 and Sandyford Business District. The site is located in close proximity to the Luas Green Line. The Glencairn Luas Station is situated approximately 200 metres to the south and the Central Park Luas Station approximately 400 metres to the northeast. The site forms part of a larger parcel of vacant land with the boundaries defined by the M50 to the north, Murphystown Way to the west and further vacant land to the east.
- 2.2 The site itself is undeveloped and greenfield in character with overgrown vegetation and mature trees. The southern section of the site is significantly higher with a gradual fall across the site from Murphystown Way towards the M50. Development to the south west of the site largely comprises of low density suburban housing. Glencairn House (the British Embassy) and associated grounds is located to the south east of 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 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 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.

3.2.2. The site is located within the boundary of the Ballyogan and Environs LAP for which there is an objective to prepare an LAP.

3.2.3 There is a Long Term Road Proposal which traverses the site to provide a slip from the N31 Leopardstown Road onto the M50 southbound. There is also a Long Term Motorway Proposal on the M50 to the north of the site for a 3rd lane from the Sandyford Interchange to the M11.

4.0 Planning History

Planning Authority Reference D04A/115/ABP Reference PL06D.211875

4.1 Permission refused by the Board in November 2005 for a development comprising 405 no. apartments in 6 no. blocks. Reasons for refusal related to excessive density, design and residential amenity impacts.

Lands to the East and South East

An Bord Pleanála Reference 302138-18

4.2 Section 9 Appeal against Section 7(3) Notice. Property at Glencairn View, Murphystown Way, Dublin 18. Determined the site was not a vacant site.

An Bord Pleanála Reference 302156-18

4.3 Section 9 Appeal against Section 7(3) Notice. Site adjacent to Glencairn House, Murphystown Road, Dublin 18. Confirmed the entry on the vacant site register.

An Bord Pleanála Reference 302580-19 (SHD)

4.4 Permission granted by the Board in December 2018 for the demolition of an existing house and outbuildings and the construction of 243 apartments, 98 houses, childcare facility and associated site works at Glencairn House, Murphystown Way.

5.0 Planning Authority Decision

5.1. 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 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.

5.1.2 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 the site was vacant on the dates of both site inspections (November 2016 and August 2018) and is considered to have been vacant and idle for the past 12

months. Aerial photography (dated May 2017 and June 2018) also verify that the site has been vacant and idle for a period of time in excess of the last 12 months.

5.1.5 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'.

5.2 Planning Authority Notice

5.2.1 Planning Authority decided under Section 7(3) to issue a Notice on 12th 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. The notice was issued to Mr. George Maloney (Receiver).

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1 An appeal was received from Corr and Associates on behalf of Mr. George Maloney (Receiver) on the 17th of January 2019 which can be summarised as follows:

- States that the site is currently under control of George Maloney Receiver and NALM as mortgagee in possession. Notes that the subject site should be considered in conjunction with the adjacent site (subject to appeal reference 303563-19) for the purposes of the appeal.
- Refers to the planning history of the site and states that the previous refusal under Planning Authority Reference D04A/1115/Appeal Reference PL06D.11876 highlights some of the site constraints in terms of density. Notes that the Urban Development and Building Height Guidelines for Planning Authorities will give more certainty as to what the proposal for housing density and yield will be on the subject site for any new development proposal.
- States that throughout 2018, the Receiver has been actively progressing a site realisation strategy for the site. Outlines that the owner is now at an advanced stage of negotiations with a residential developer and it is anticipated that the

developer will acquire the site and progress a planning application.

- Refers to the Issues Paper prepared with respect the draft Ballyogan and Environs LAP. Amongst the issues raised is the requirement for the development of a new bridge over the M50 (east of Junction 14) which will cross the landholding linking Murphystown Way to Leopardstown Road. The provision of this infrastructural link is also an objective of the current County Plan. The draft LAP will provide more information on how the development of transport infrastructure and residential uses will be co-ordinated and integrated. As the LAP is unpublished, details of the design and impact of the future M50 crossing are undetermined and subject to ongoing consultation.
- States that the site should not be included on the VSR as the determination of the route corridor for the M50 bridge crossing has the potential to impact upon the progression of a planning application. Inclusion on the register is premature until relevant matters surrounding this infrastructure are resolved.
- Details that the owner has issued a licence to the prospective purchaser to carry out site investigation works including trial holes, tree surveys, flora and fauna surveys etc. Consider that this demonstrates that there are site works ongoing to facilitate the preparation of a planning application.

6.2. Planning Authority Response

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

- Note that since the Receiver's appointment in 2010, there has been no activity on the site. Submit that there is a potential conflict between the duty of a Receiver to realise the best price for an asset and the main objective of the URHA 2015 to increase housing supply, irrespective of any debts/loans that may be in place.
- Any site Realisation Strategy that is being advanced is irrelevant in the context of the URHA 2015. The purpose of the URHAS 2015 is to increase housing supply and no provision is made for a landowner to withhold the release of land

for commercial viability related reasons.

- The Road Objective that traverses the site comprises a 'Long Term Road Objective'. The forthcoming LAP must be consistent with the DLR County Development Plan 2016-2022. The presence of a 'Long Term Road Objective' at the site doesn't prohibit development of the site. Refers to the Dublin Eastern Bypass Reservation Corridor which also comprises a 'Long Term Road Objective' and that development bordering this corridor isn't prohibited.
- The Local Authority consider that the presence of a 'Long Term Road Objective' doesn't prohibit development at the site, but rather any future development of the site would be required to be designed in a manner that doesn't inhibit the future delivery of the 'Long Term Road Objective'.

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 which is summarised as follows:

- Refutes that there may be any conflict between the role of the Receiver in the administration of the subject site.
- Consider that it would be premature to development the site pending the outcome of the LAP process. States that to include a development site on the VSR when the LAP process has commenced is setting a precedent that could be construed as planning applications for permission having a material impact on the draft LAP would be acceptable in other areas where LAPs are to be carried out. The inclusion of the site on the VSR may pre-empt the outcome of the LAP on adoption and exclude the subject site from any influence by Elected Members of the council.
- Submit that in 2012 the Council applied to the Board for approval to construct the Leopardstown Link Road and Roundabout Reconfiguration Scheme which included the road through the wider site. The Board omitted this link road and one of the reasons related to design considerations associated with the alignment of the new bridge and its interface with adjoining lands north and south of the M50.

- States that the road objective traversing the site will be defined during the LAP process. Despite DLR stating that it will not impede a planning application on the site being submitted, it would be considered an essential element of the LAP. It could be perceived as disingenuous to include a site that is subject to an LAP that is currently on hold on a VSR.
- Notes that a significant portion of the site is designated as open space and that the appropriate framework for the delivery of the open space is the proposed draft LAP.
- Refers to the publication of the Regional Spatial and Economic Strategies for the Eastern and Midland Regional Assembly and that it will be necessary to review the County Plan and subordinate plans. Considers that it would be premature to develop the site in this context as a variation to the County Plan could significantly change the vision of the Development Plan and the LAP.
- Refers to Section 6 (6) of the URHA Act and states that there is no argument put forward by the Local Authority that the subject site is having any adverse effect on the surrounding area in terms of being in a ruinous or neglected condition, the site is subject to antisocial behaviour or that there is a reduction in houses and/or population in the area.

7.0 **Assessment**

7.1. **Introduction**

7.1.1. 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 outlined 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.

7.1.2. 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.

7.1.3. As I note above, 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”.

7.1.4. I would note that the appellants do not question the need for housing in the area and, therefore, I do not intend to address this matter further. My assessment will, therefore, address specifically section 5(1) (a) (ii) (I) whether the majority of the site is vacant or idle and section (II) as to whether the site is suitable for housing. In this context, I shall have particular regard to section 6 (5) of the Act which determines the suitability for housing having regard 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 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.

7.1.5 I note that the appellant refers to Section 6(6) of the Act and that the Planning Authority have made no argument that the site meets any of the criteria detailed therein. This section of the Act however, refers to a vacant site on regeneration land. The subject site has been identified as a vacant site on residential land and

therefore, the provisions of Section 6(6) are not applicable (refer to Circular Letter PL7/20160).

Vacant or Idle/Purpose of the Lands

- 7.1.6 It is set out by the appellant that the owner of the site has issued a non exclusive licence to a prospective purchaser to carry out site investigation works including trial holes, tree survey, flora and fauna surveys etc. It is asserted that this demonstrates that there are site works ongoing to facilitate the preparation of a planning application. Having regard to the nature of the works described by the appellant, I am satisfied that these do not constitute development works. The lands remain vacant or idle.
- 7.1.7 The appellant also refers to the fact that the owner is actively progressing a site realisation strategy for the site and is in an advanced stage of negotiations with a residential developer. It is anticipated that a planning application to progress residential development on the subject lands will be progressed in the short term.
- 7.1.8 There is no provision in the legislation to prohibit the entry of a vacant site onto the register on the basis that a planning application for their 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. In this instance, the site is clearly vacant at present and this appears to have been the case during the intervening period. The appellant has not detailed any permitted on-site uses and relies solely on the administrative tasks of site planning and surveys. The 2015 Act makes no allowance for such administrative tasks and I am satisfied that the site was a vacant site for the relevant time period and continues to be a vacant site.

Suitable for Housing

The Core Strategy

- 7.1.9 The subject site is zoned for residential development under the Dun Laoghaire Rathdown County Development Plan. It is located in an established urban area in close proximity to excellent public transport connections. I consider the proposed site to be entirely consistent with the provisions of the core strategy set out in the County Plan.

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

- 7.1.10 The primary issue raised by the appellant relates to the prematurity of the development pending the publication of the Ballyogan and Environs LAP. It is detailed that there is a specific roads objective (also referenced in the County Plan) and a requirement to develop a new bridge over the M50 and that the LAP will provide further detail as to how the development of transport infrastructure and residential uses will be co-ordinated and integrated.
- 7.1.11 I would concur with the view of the Planning Authority, that the publication of the draft LAP is not an impediment to the development of the subject site and I note that a number of developments within the LAP boundary, including the adjacent site at Glencairn, have been progressed in the absence of the draft LAP. Indeed the issue of prematurity was given detailed consideration in the Inspector's Report with respect to application 302580 – 18.

“As is outlined in Section 6 above, the Planning Authority are in the process of preparing a Draft of the proposed Ballyogan Local Area Plan with said draft expected in early 2019. The subject site is located within the area defined to be covered by the LAP. However, I do not consider that the proposal is premature pending the adoption of the Ballyogan LAP given that the site is zoned for development and the specific objectives pertaining to the lands have been subject of considerable pre-planning discussions prior to the submission of this application.”

- 7.1.12 Similarly with respect to the subject lands, I am satisfied that a planning application could be progressed on the subject site in the absence of the LAP and in accordance with the provisions of the County Development Plan as long as the development did not prejudice or inhibit the delivery of the said roads objective.
- 7.1.13 It is acknowledged that to determine the definitive route corridor of the Murphystown Link Road and the alignment of the proposed M50 bridge element and associated interface with this site will require significant up front design work and consultation with relevant stakeholders. I consider however, that such detailed design work could be progressed and agreed with the Local Authority in the absence of an LAP. Whilst the LAP may set out site specific objectives, it is unlikely to specify the detailed

design of this infrastructure. In this regard, the provision of this infrastructure, is in my view not dependent on the publication of the LAP.

7.1.14 With reference to the draft Regional Spatial and Economic Strategy for the Eastern and Midlands Region and the appellant's assertion that the development is premature pending a variation to the County Plan to align with the strategy, I would concur with the view of the Planning Authority that this process would in no way restrict the development of the site. This is evidenced by the multitude of applications for housing development being progressed in Dun Laoghaire Rathdown, notwithstanding the fact that the Development Plan has not yet been varied to take into account the draft RSES. The subject site is zoned for residential development and its future development potential will be governed by the provisions and objectives of the County Development Plan as well as relevant government and departmental guidelines. The development of the site is in my view not premature pending a variation to the County Plan to account for the RSES.

7.1.15 The appellant also refers to the fact that a significant area of the subject site is designated as open space in the current plan and that a structured approach to development of such open space would be addressed during the draft LAP process. The Board should note however, that the area of open space referred to by the appellant is located to the north of the subject site and does not form part of the landholding to be included in the VSR.

7.1.16 In conclusion, I am satisfied that the site is served by adequate public infrastructure necessary to enable housing to be provided and serviced. Whilst there is a long term roads objective pertaining to the lands, I am satisfied that detailed design works required to facilitate the long terms road objective including the development of a new bridge over the M50 could be progressed in the absence of an LAP. The development of the site can be progressed in accordance with the provisions of the County Development Plan. There are a number of precedents in the Ballyogan area where residential development has been progressed in the absence of the LAP.

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

7.1.17 There are no factors affecting the physical condition of the land which may affect the provision of housing.

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-0081) was a vacant site for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 12th December 2018 shall be deemed to take effect from that date.

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,

(d) That the majority of the site is vacant or idle, there is a need for housing in the area, the site is suitable for the provision of housing, and that insufficient reason is put forward to cancel entry on the Vacant Sites Register.

(e) That the development of the site is not premature pending the publication of the draft Ballyogan and Environs LAP and that a planning application could be progressed on the subject lands in accordance with the provisions of the County Development Plan and having regard to the Long Term Roads objective pertaining to the lands.

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

Erika Casey
Senior Planning Inspector

10th May 2019