



An
Bord
Pleanála

Inspector's Report ABP-303493-19

Type of Appeal	Section 9 Appeal against Section 7(3) Notice
Location	Site at Frankfort Lodge, Old Frankfort, Dublin 14.
Planning Authority	Dun Laoghaire Rathdown County Council
Planning Authority VSL Reg. Ref.	VS-0039
Site Owner	Pembroke Partnership Ltd
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 Frankfort Lodge, Old Frankfort, Dublin 14 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)(b) and 5(2) of the 2015 Act.
- 1.2. The appeal site registered under VSL reference VS - 0039, has one stated registered owner, Pembroke Partnership Limited.

2.0 Site Location and Description

- 2.1 The subject site is located in the established residential area of Dundrum, Dublin 14, c. 1.5 km from Dundrum Town Centre and in the functional area of Dun Laoghaire Rathdown County Council. The green Luas line runs close to the western site boundary with the Windy Arbour Luas station c. 500m to the north and the Dundrum Luas Station c. 600m to the south. The site has an area of c. 0.21 ha and comprises a derelict house, Frankfort Lodge, and associated overgrown gardens. The existing house dates to the early 1900s but is not a protected structure. The site is surrounded by residential development except for the Luas line to the west.

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)(b) and 5(2) of the Act. The Notice is dated 20th 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)(b) of the Act provides that, in the case of a site consisting of regeneration land—

- (i) the site, or the majority of the site, is vacant or idle, and
- (ii) the site being vacant or idle has adverse effects on existing amenities or reduces the amenity provided by existing public infrastructure and facilities (within the meaning of section 48 of the Act of 2000) in the area in which the site is situated or has adverse affects on the character of the area.

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(6) provides that the planning authority, or the Board on appeal, shall determine whether or not the site being vacant or idle has adverse effects on existing amenities or reduces the amenity provided by existing public infrastructure and facilities in the area in which the site is situated or has adverse affects on the character of the area for the purposes of this Part by reference to whether—

- (a) land or structures in the area were, or are, in a ruinous or neglected condition,
- (b) anti-social behaviour was or is taking place in the area, or
- (c) there has been a reduction in the number of habitable houses, or the number of people living, in the area,

and whether or not these matters were affected by the existence of such vacant or idle land.

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.

3.2.2. Section 1.3 of the development plan deals with development areas and regeneration. Section 1.3.3. states in relation to Local Area Plans:

“In accordance with Section 10(2)(h) of the Planning and Development Act 2010 (as amended), the following areas are considered to contain lands in need of regeneration/renewal - Dún Laoghaire, Dundrum, Sallynoggin and Stillorgan. There are differing definitions of regeneration in urban planning but it is taken to mean the integrated local redevelopment of an area.”

The site is within the boundary of the Dundrum LAP. Development plan Table 1.3.1 indicates that a new plan is to be prepared for this area. The Dun Laoghaire Rathdown County Council website indicates that the council intends to prepare a LAP for Dundrum from 2019-2025.

4.0 **Planning History**

4.1 **D10A/0183 PL06D.237049**

4.1.1. Permission sought to demolish existing house and outbuildings and construct a new 2 storey detached house, new vehicular entrance and all associated landscaping and site works. The planning authority refused permission. The Board refused permission on appeal for one reason relating to scale, design and location adjacent to the historic Frankfort Castle.

4.2. **D11A/0166**

4.2.1. Permission granted to demolish existing house and to construct a new 2 storey detached house, provision of new vehicular entrance and all associated landscaping and site works.

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. The site is located within the boundary of Dundrum, which is identified in section 1.3.3 of the County Development Plan as in need of regeneration / renewal. The site is therefore considered with regard to the criteria set out in section 5(1)(b), i.e. regeneration land.

5.1.4 In relation to the majority of the site being vacant or idle for the last 12 months, it is stated that site inspections on 9th and 29th August 2018 found the site to be vacant, photos are submitted. The site was in a derelict condition with existing structures boarded up and significant fire damage, which appears to have occurred between the two site visits. The report concludes that the site does not have an active use and is currently vacant and idle. It was also considered that, due to its ruinous and neglected state and potential use for anti-social behaviour, the site had an adverse effect on the character and amenities of the area and reduced the amenity provided by existing public infrastructure facilities in the area. These negative impacts were likely to continue and / or worsen if the condition of the site deteriorates further. The following points are noted in relation to section 6(6)(c):

- The results from the 2016 Census detail the total population of the Churchtown – Woodlawn Electoral Division (ED) as 1,481, an increase of 7% since the 2011 Census.
- The 2016 Census details a total no. of housing units of 592 within the ED. There were 585 within the ED in 2011, i.e. there has been an increase of c. 1.2% in the total housing stock. Of this housing stock, 4.5% were classed as ‘vacant’ in 2016 (excluding holiday homes) while in 2011 the vacancy rate was 6.3%.
- The population of the DED has increased by 7% between 2011 and 2016, however the housing stock has remained relatively static.

The site was considered to meet the criteria of section 6(6)(b) on this basis.

- 5.1.1. The current site owner, Pembroke Partnership, made a submission to the planning authority in December 2018 submitting that a planning application was currently being prepared in relation to the site and that a team of architects, engineers and planning consultants had been appointed to progress same, with the intention to submit an application to Dun Laoghaire Rathdown County Council in Q1 2019. However, the planning authority noted that the 2015 Act does not make provision for not entering a site on the Vacant Sites Register on the basis of pre-planning or future plans for development, also that the site owner had not submitted any evidence that the site was not a vacant site for the 12 months concerned.
- 5.1.2. Under the provisions of Section 5 of the Urban Regeneration and Housing Act 2015 (as amended), the planning authority considered that the site is currently vacant / idle, consists of 'regeneration land' and meets the criteria set out in section 6(6) of the Act and therefore is a 'vacant site' as per section 5(1)(b) 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 20th December 2018 referencing Sections 5(1)(b), 5(2) and Section 6(2) of the 2015 Act and stating that the site has been entered onto the Vacant Sites Register. The notice was issued to Pembroke Partnership Limited.

6.0 The Appeal

6.1 Grounds of Appeal

- 6.1.1 The appeal received from Pembroke Partnership Limited on 28th January 2019 may be summarised as follows:
- The site is part of a larger assembly of lands which includes the adjacent nos. 1 and 2 Frankfort Castle.
 - The site owner has engaged a team of planning consultants, architects, engineers and archaeologists (names provided) to progress a planning application to develop these lands.
 - The submission includes a plan and indicative schedule of proposed residential units at the site.

- The site owner intends to apply for permission for the scheme through the SHD process in Q1 2019. The application has been delayed due to commercial discussions regarding the assembly of the land parcel.
- It is submitted that in these circumstances and given the expense incurred in progressing the application to date, it is unreasonable for the site to be included on the Vacant Sites Register.
- It is submitted that, if the site is to remain on the Register, the zero rating should apply as provided for in section 17 of the Act, i.e. in relation to a death or change of ownership. The purchase of the last part of the land parcel is only currently being completed.
- The site is secure and its predominantly green boundary is maintained and intact. It is not having any negative impact on the amenity value of the local environment.

6.2. 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. No response was received.

7.0 Assessment

7.1. 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)(b) and 6(6) of the 2015 Act:

- Does the site consist of Regeneration Land?
- Is the site, or the majority of the site, vacant or idle?

- Does the site being vacant / idle have adverse effects on existing amenities or reduce the amenity provided by existing public infrastructure or facilities?
- Transfer of Ownership

These matters may be considered separately as follows.

7.2. **Regeneration Land**

7.2.1. Section 3 of the Act defines regeneration land as follows:

“regeneration land” means land identified by a planning authority in its development plan or local area plan, after the coming into operation of section 28 , in accordance with section 10(2)(h) of the Act of 2000 with the objective of development and renewal of areas in need of regeneration, and includes any structures on such land;

7.2.2. The site is zoned for residential development under the current County Development Plan. Section 1.3.3 of the plan identifies Dundrum, the area in which the site is located, as in need of regeneration / renewal. The relevant development plan map indicates that the site is within the boundary of the Dundrum LAP. The site is therefore considered to constitute ‘regeneration land’. This matter is not contested in the Appeal.

7.3. **Is the site, or the majority of the site, vacant or idle?**

7.4. The appellant submits that the site forms part of a larger assembly of lands and that a planning application is currently being progressed for the overall land parcel, to be submitted to ABP under the SHD process in 2019. Circular letter PL 7/2016 provides guidance on this matter. I note the following statement in Appendix 3 of same:

“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.”

In this case, permission was granted for a replacement dwelling on the site back in 2011. No site works have taken place that might be deemed to constitute development. The appellant has not yet progressed their development proposals to the stage of lodging an SHD application and, even if they had done so, this would not prevent the site from being entered onto the Vacant Sites Register as 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.

- 7.5. 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 inspections on 9th and 29th August 2018. 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, i.e. August 2017. It therefore has not provided satisfactory evidence that the site was vacant for the 12 months predating its entry on the Register.

7.6. **Effects on Amenities**

- 7.6.1. The site is considered to have an adverse effect on the amenities of the area due to its derelict, disused and overgrown condition. Given the detrimental effect it has on the value and appearance of adjacent properties, it is also considered that the site reduces the amenity provided by existing public infrastructure and facilities in the area. This matter may be considered further with regard to the criteria provided in section 6(6). The site is a disused house and grounds. The house has suffered extensive fire damage. It is roofless and the grounds are totally overgrown. I therefore consider that section 6(6)(a) applies, i.e. the site is in a ruinous or neglected condition. Having regard to my site inspection on 1st August 2019, which noted litter present at the site, and to the photographs on file taken by the planning authority on 9th and 29th August 2019, which indicate extensive fire damage, I consider that there is strong evidence that the site is used for anti-social behaviour and that section 6(6)(b) therefore applies. I note the Census information and data provided by the planning authority in relation to population change and housing provision in the area and that this demonstrates a reduction in the number of habitable houses in the area as per section 6(6)(c). It is considered on this basis that the site meets the tests of sections 5(1)(b) and 6(6) of the 2015 Act.

7.7. Transfer of Ownership

- 7.7.1. Section 17(1) of the Act provides that the amount of vacant site levy to be charged in respect of a site shall be zero for the year preceding a change in ownership of a vacant site. The appellant states that the site is part of a larger land parcel and that the last part of the parcel has only recently been acquired. However, given that this change of ownership does not apply to the subject site as identified within the red line boundary on the map provided by the planning authority, section 17(1) is not considered to apply in this instance.

8.0 Conclusion

- 8.1. I am satisfied that section 5(1)(b)(ii) of the 2015 Act applies, also that the site meets the tests set out in section 6(6). 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 inspections on 9th and 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 on 17th 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.

9.0 Recommendation

- 9.1. 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 Frankfort Lodge, Old Frankfort, Dublin 14 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.

10.0 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