



An
Bord
Pleanála

Inspector's Report ABP-303500-19

Type of Appeal	Section 9 Appeal against section 7(3) Notice
Location	Site at Junction of Main Street & Boherboy, Saggart, Co. Dublin
Planning Authority	South Dublin County Council
Planning Authority VSL Reg. Ref.	Side ID 248
Site Owner	Maxol Ltd
Planning Authority Decision	Place on Register
Date of Site Visit	15 July 2019
Inspector	Una Crosse

1.0 Introduction

- 1.1. This appeal refers to a section 7(3) notice issued by South Dublin County Council in respect of a site at the junction of Main Street and Boherboy, Saggart, Co. Dublin. The subject site was entered on the Vacant Site Register on 18th December 2018 on the basis that the site was vacant under Section 5(1)(b) of the Act. The Notice was issued to Maxol Ltd.

2.0 Site Location and Description

- 2.1. The site comprises an area of 0.36 hectares and comprises a regularly square shaped flat site which adjoins Main Street to the north, Boherboy Road to the west, an area of open space to the east and an area of open space, a linear strip of parking and Pairc Mhuire, a residential area to the south. The site accommodates a two-storey structure which was part of a former public house which addresses Main Street. The site is fenced with a gated vehicular entrance to the north of the site near the junction Main Street and Boherboy Road. I would note that on the day of my visit there were works being undertaken to the public road pathways and public realm in the vicinity of the site. I would also note that 'for sale' signs were on the site on the day of my visit.

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)(b) and 5(2) of the Act. The Notice is dated 18th 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 Urban Regeneration and Housing Act 2015 states 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 effects on the character of the area.

3.2. Development Plan Policy – South Dublin County Development Plan 2016-2022

- 3.2.1. The site is zoned VC in the CDP the objective of which is to protect, improve and provide for future development of Village Centres.
- 3.2.2. The South Dublin County Council Development Plan 2016-2022 was varied (Variation 1 & 2) on 21st May 2018 with Chapter 11 varied to include Section 11.1.2 which provides that lands zoned Objective REGEN (regeneration), TC (town centre), DC (District Centre), VC (village centre) and LC (local centre) are included for the purposes of Regeneration as defined in the 2015 Act.

4.0 Planning History

- 4.1. **Ref. SD18A/0202 (ABP-303270-18)** – Permission granted for a missed use development of 29 residential units, office unit (100 sq.m) and 2 retail units (87 sq.m & 154 sq.m). A first party appeal against a financial contribution was made with condition removed.
- 4.2. **Ref. SD16A/0008 (ABP-PL06S.246386)** – permission refused on appeal for demolition of 2-storey public house and redevelopment to include two-storey detached building with retail and petrol filling station.
- 4.3. **Ref. SD06A/0636 (ABP-PL06S.223166)** – permission granted for demolition of existing garage and extension to Saggart Arms and construction of a mixed-use residential, office, retail and restaurant development. Permission extended until November 2017.

5.0 Planning Authority Decision

5.1. Planning Authority Reports

- 5.1.1. An initial site inspection report which is dated 30 October 2018 responds to a series of questions and outlines that the site is a regen site, responds no to anti-social behaviour, yes to land or structures in a ruinous or neglected condition and yes to

the site having adverse effects on the existing amenities or adverse effects on the character of the area. It is stated that it is proposed for entry onto the VSR and photos of the site are attached.

- 5.1.2. A response to same was submitted on behalf of the owner and notes that the site and building are not currently actively used but is not a vacant site as per the legislation. The lands and structure are not in a ruinous or neglected condition, anti-social behaviour is not taking place in the area, the site did not previously accommodate residential units and thus does not result in the reduction of residential units in the area and permission granted on the lands.
- 5.1.3. A second PA report, entitled Register of Vacant Sites Planning Report and which is dated 17th December 2018 refers to inspection dates of 6 September 2016 and 30 October 2018. It outlines the site details, location, planning history, zoning and ownership and the responses to the Section 7(1) Notice received are summarised. It comments that the site is a prominent site in the centre of the village with part of a disused public house on the site facing onto Main Street with the site surrounded by fencing and no evidence of recent activity on site. It states that the submission received has been considered by the PA with any proposals to progress development welcomed but that proposals alone are insufficient to determine that a site is no longer vacant or idle which the site has been for a number of years. It states that it has not been demonstrated to the satisfaction of the PA that the site or majority of the site has not been vacant or idle for the preceding 12 months.
- 5.1.4. In relation to adverse effects it states that the site is a large and prominent site in the centre of Saggart well served by existing infrastructure and facilities. Given the lack of any productive uses on site, considered that the site being idle does not provide for an efficient use of the available public services and facilities which serve the subject site and considered that the vacant and idle nature of this urban site set within a built up area with surrounding active uses has adverse effects on existing amenities and on the character of the area. It is stated that the site appears to be neglected by virtue of the absence of any recent activity on site and the presence of a boarded up building on site. It notes that the submission notes that works were carried out by the previous owners at the direction of the Derelict Sites Section of SDCC including the erection of fencing and works to secure the existing building. While these works may have overcome the derelict or ruinous condition of the site

and it is not considered that they address the neglected condition of the site. No evidence of anti-social behaviour having taken place on site at time of site inspection and there has not been a reduction in the number of habitable homes or people living in the area due to the site being vacant or idle.

- 5.1.5. Considered that subject site being vacant or idle has adverse effects on existing amenities, reduces the amenity provided by existing public infrastructure and facilities in the area in which the site is situated and has adverse effects on the character of the area and furthermore considered that the above matters arise as a result of the existence of the site as vacant or idle land. The recommendation outlines that the site is zoned VC in the Plan, has been idle for a number of years and in accordance with Section 5(1)(b) is a vacant site which is suitable for regeneration and should be entered on the Register.

5.2. **Planning Authority Notice**

- 5.3. Planning Authority decided under section 7(3), dated 18 December 2018 to issue a notice stating that the PA is of the opinion that the site is a vacant site within the meaning of Section 5(1)(b) of the Act.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

The appellant's grounds of appeal are summarised as follows:

- For the purposes of the core strategy and housing capacity the VC zoning is considered a 'regeneration' zoning and can be considered under Section 5(1)(b).
- Site previously in use as a public house and petrol filling station with extensive surface parking and not in residential use with zoning not requiring site developed for residential purposes.
- Current landowners purchased the site from a receiver in February 2015 with permission on the site at the time for a mixed use scheme (extended to Nov. 2017), it was fenced in and cleared apart from the two-storey building and permission considered unviable so not implemented with vacancy in adjoining shopping centre.

- Permission sought in 2016 for a petrol filling station which was refused on appeal by the Board in August 2016 following which a feasibility study informed a new design for the site with permission granted following further information request in November 2018 which is subject to a first party appeal.
- Site not owned by appellant for an extended period of time, extant permission had 2 years to run but was not implemented as it could not be funded, permission for a filling station was refused and permission for a new design for the site sought and permission granted end of 2018 at the same time the Notice of entry was issued and appellant since acquiring site have not had a negative impact on the condition of the site and have invested in its development.
- Site does not meet criteria in Section 5(1)(b) and while site is currently unused it is not vacant as per the meaning of Section 5 of the Act as per Section 5(1)(b)(ii) as determined by Section 6(6).
- Site and existing structure on site is not currently in active use, they are not in a ruinous or neglected condition with the existing building painted, no graffiti and high quality fencing around the site.
- Building maintained in such condition that unauthorised entry prevented and ongoing retention of structure allows for its integration into future development of the lands continuing to the maintenance of the character of the site.
- Lands otherwise cleared, not overgrown nor subject to unauthorised dumping or littering.
- Prior to site being purchased by appellant, Receiver undertook works in 2014 at direction of SDCC Derelict Sites Register including erection of fencing and carrying out works to secure existing building which were considered acceptable with neither the land nor structures are in a ruinous or neglected condition.
- Anti-social behaviour is not taking place on the site or its surroundings with existing fencing allowing passive surveillance and while site is unused it does not facilitate anti-social behaviour and existing structure is sufficiently protected to prevent trespass and anti-social behaviour with security company to monitor the subject retained.

- Subject sites condition has not resulted in the reduction of habitable houses in the neighbouring area, site has not previously accommodated residential development.
- Site does not meet any of the 3 criteria in Section 6(6) and does not have an adverse effect on existing amenities.

6.2. Planning Authority Response

6.2.1. No response received.

7.0 Assessment

7.1. Introduction

7.1.1. Section 5(1)(b) refers to lands considered to come within the meaning included for Regeneration Land and the tests for such sites are as follows:

- (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 effects on the character of the area.

7.1.2. The site must meet both tests and I will address each in turn.

7.2. Vacant or Idle

7.2.1. In terms of subsection 5(1)(b)(i), that the site, or the majority of the site, is vacant or idle, I note the planning history of the site and the history of the ownership of the site which came into the appellants ownership in February 2015 with permission on the site at the time for a mixed use scheme (extended to Nov. 2017). This was considered unviable and was not implemented. Permission was then sought in 2016 for a petrol filling station which was refused on appeal by the Board in August 2016 following which a feasibility study informed a new design for the site with permission granted following further information request in November 2018 which is subject to a first party appeal. It is also stated that the site is not owned by the appellant for an extended period of time, with the extant permission having 2 years to run but was not implemented and a new permission sought, now granted. While the endeavours to bring forward development on the lands by the appellant are acknowledged,

permission, while a necessary part of the development process, only facilitates development and the intention of the legislation is to activate development on sites. The site does not have any use as is clear from the grounds of appeal and site photos attached and therefore I consider that the site can be considered vacant or idle for the purposes of Section 5(1)(b)(i).

7.3. Adverse Effects

7.3.1. In order to be considered a vacant site under Section 5(1)(b) a site must also meet the test outlined in Section 5(1)(b)(ii) that being that 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 effects on the character of the area. This test is considered by reference to Section 6(6) of the Act which states that ‘a planning authority, or the Board on appeal, shall determine whether or not the site being vacant or idle has adverse affects 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 effects 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.

7.3.2. The first matter 6(6)(a) is whether the land or structures in the area were, or are, in a ruinous or neglected condition. The PA state that that the site appears to be neglected by virtue of the absence of any recent activity on site and the presence of a boarded up building on site. It refers to the submission which notes that works were carried out by the previous owners at the direction of the Derelict Sites Section of SDCC including the erection of fencing and works to secure the existing building. While these works may have overcome the derelict or ruinous condition of the site and it is not considered that they address the neglected condition of the site.

The appellants state that the site and existing structure on the site is not currently in active use but that it is not in a ruinous or neglected condition with the existing building painted, no graffiti and high quality fencing around the site. They state that the building is maintained in such condition that unauthorised entry prevented and ongoing retention of structure allows for its integration into future development of the lands continuing to the maintenance of the character of the site. It is further stated that the lands are otherwise cleared, not overgrown nor subject to unauthorised dumping or littering. They also state that prior to the site being purchased by the appellant, that the Receiver undertook works in 2014 at direction of SDCC Derelict Sites Register including erection of fencing and carrying out works to secure existing building which were considered acceptable with neither the land nor structures are in a ruinous or neglected condition.

7.3.3. I note the works previous works undertaken to the site to make it secure and consider that the hoarding is appropriate. I would also note that on the day of my visit there were works being undertaken to the public pathways and realm which I consider detract from the amenity of the area for the temporary duration of the works. The front elevation of the building has been boarded up and painted and while not providing any activity to the street is relatively well maintained. However the rear of the property has not been equally maintained and while painted has a neglected appearance and detracts from the area given the wide open views of the rear elevation from the west, east and southern aspects of the site. In addition, the site is overgrown to a considerable degree. As I said it does not assist the site that the public works were ongoing but discounting same, the site and building thereon, is in my opinion neglected and would comply with Section 6(6)(a) of the Act.

7.3.4. The second matter 6(6)(b) refers to anti-social behaviour which was or is taking place in the area. I would note that the PA states that there is no evidence of anti-social behaviour having taken place on site at time of site inspection. The appellant states that anti-social behaviour is not taking place on the site or its surroundings with existing fencing allows passive surveillance and while site is unused it does not facilitate anti-social behaviour and existing structure is sufficiently protected to prevent trespass and anti-social behaviour with security company to monitor the subject retained. I concur with this consideration that this matter is not relevant which is shared by both the PA and the appellant.

- 7.3.5. The PA state that there has not been a reduction in the number of habitable homes or people living in the area due to the site being vacant or idle. In the grounds of appeal the appellant states that the subject sites condition has not resulted in the reduction of habitable houses in the neighbouring area, site has not previously accommodated residential development. I would agree with the contention shared by both the PA and appellant in this regard.
- 7.3.6. Given that the site is not required to meet each of the three tests, the necessary parameters of Section 6(6) (a) has been met and in this regard the site is a vacant site as defined by Section 5(1)(b).

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 confirm the entry on the register of site (Site ID 248) at junction of Main Street & Boherboy, Saggart, Co. Dublin was vacant or idle for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 16th July 2018 shall be confirmed.

9.0 Reasons and Considerations

- 9.1. Having regard to
- (a) the information submitted to 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 Inspector,
 - (d) the neglected condition of the site and the neglected condition of the structure thereon, which it is considered has adverse effects on existing amenities and on the character of the area,
- the Board considered that it is appropriate that a notice be issued to the planning authority to confirm the entry on the Vacant Sites Register.

Una Crosse
Senior Planning Inspector

July 2019