



An
Bord
Pleanála

Inspector's Report ABP-303502-19

Type of Appeal	Section 9 Appeal against section 7(3) Notice
Location	Appeal against on entry on vacant site register
Planning Authority	South Dublin County Council
Planning Authority VSL Reg. Ref.	Ref ID 96
Site Owner	GN Lexington Property Limited
Planning Authority Decision	Place on Register
Date of Site Visit	27 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 Monastery Road, Clondalkin, Dublin 22. 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)(a) of the Act. The Notice was issued to GN Lexington Property Ltd.

2.0 Site Location and Description

- 2.1. The site comprises an area of 0.43 hectares which addresses Monastery Road which is a main access road into Clondalkin Village. The site also addresses Monastery Park an established residential development along its eastern boundary. Clondalkin Library which is a protected structure adjoins the southwest of the site. On the day of my visit the site can be described as a well progressed building site with hoarding adjoining the boundaries and considerable work undertaken on the building of the proposed nursing home.

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 18th December 2018 and is accompanied by a map outlining the extent of the site to which the Notice relates.
- 3.1.2. It is noted that the definition of vacant or idle has been amended by Section 63 of the Planning and Development (Amendment) Act 2018 which commenced upon coming into effect of the Act. 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—
- (l) 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 – South Dublin County Development Plan 2016-2022**

- 3.2.1. The site is zoned RES in the CDP the objective of which is to protect and/or improve residential amenity.
- 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 RES and RES-N are included for the purposes of Residential as defined in the 2015 Act.

4.0 **Planning History**

- 4.1. **Ref. SD17A/0086 (ABP-PL06S.248776)** – permission granted for demolition of house and development of detached 87 bedroom nursing home with 92 bedspaces and part basement.
- 4.2. **Ref. SD04A/0122 (ABP-PL06S.206949)** – Permission refused for 37 residential units, demolition of existing house and an extension to rear of Clondalkin Library (protected structure).
- 4.3. **Ref. SD02A/0700 (ABP-PL06S.202281)** – Permission refused for 51 residential units, demolition of existing house and an extension to rear of Clondalkin Library (protected structure).
- 4.4. **Ref. SD01A/0111 (ABP-PL06S.126377)** – Permission refused for 58 residential units, demolition of existing house and an extension to rear of Clondalkin Library (protected structure).

5.0 Planning Authority Decision

5.1. Planning Authority Reports

- 5.1.1. An initial site inspection report which is dated 22 September 2016 responds to a series of questions and outlines that site is in an area where there is a need for housing, that the site has been vacant or idle from last 12 months. That site is adequately serviced and that there is not anything affecting the physical condition of the land to make it unsuitable for housing. It is stated that the site is a residential site. It is stated that it should be included for assessment for entry onto the VSR and photos of the site are attached. A second site inspection report which is dated 30 October 2018 responds the same way as above to the series of questions. It is stated that it should be included for assessment for entry onto the VSR and photos of the site are attached. A section 7(1) Notice was issued to the owner dated 31 October 2018.
- 5.1.2. A response to same was submitted on behalf of the owner and states that a 7-day commencement notice with details of construction has been submitted to SDCC and that contractors have moved onto the site and that they decline the offer of entry on the vacant site register.
- 5.1.3. A second PA report, entitled Register of Vacant Sites Planning Report and which is dated 14th December 2018 refers to inspection dates of 22 September 2016 and 30 October 2018. It outlines the site details, location, planning history, zoning and ownership and the response to the Section 7(1) Notice received. It comments that the site comprises of undeveloped lands and a disused dwelling fronting onto Monastery Road and Monastery Park in an established residential area to the east of Clondalkin Village. It states that hoarding has been erected around the site with no evidence of activity on site at the time of the site visit.
- 5.1.4. It states that the submission received has been considered by the PA with the 7-day commencement notice submitted noted which indicates a commencement date of 30 October 2018 in relation to the permitted development. It is stated that while the development on site may be commencing imminently, details submitted and site inspection undertaken not been demonstrated to the satisfaction of the PA that majority of site is not vacant or idle for the preceding 12 months.

- 5.1.5. In relation to housing need reference is made to the core strategy and likely need for 32,132 units in SDC between 2015-2022 with the interim housing strategy forecasting that 8,303 social housing units will be required for the period 2016-2022. The average rent in SDC in 2018 including year on year change according to the Daft.ie rental price report Q3 2018 for South County Dublin is €2,156 (10.3% increase) and West Dublin €1,745 (12.5% increase) with combined average €1,950. The median purchase price for a dwelling in South Dublin, according to the CSO market-based household purchases of residential dwelling has risen from €249,700 in 2014 to €320,000 in 2017. The number of household on the housing list at year end in South Dublin was 8,944 in 2015 and 8,040 in 2018. 621 persons were on the homeless register in September 2018. There are 98,387 existing residential units in the County, based on CSO Census 2016 figures. An analysis of daft.ie on 13 December 2018 reveal 782 properties available for sale and 128 properties available for rent in the County (margin of error included where areas are shared with other local authorities). The proportion of properties that are available for sale and/or to rent as a percentage of the overall housing stock in the County is 0.9%. It is determined that from the information outlined that there is a need for housing in the area.
- 5.1.6. In relation to suitability for housing, site is zoned for residential use and located within designated 'Metropolitan Consolidation Town' in the core strategy of the SDCC Development Plan 2016-2022. Site is within the established residential area and is adequately serviced by public infrastructure and facilities. It is stated that there is no evidence of anything affecting the physical condition of the land comprising the site which would affect the provision of housing and site therefore considered suitable for housing.
- 5.1.7. Site or majority of site is stated to be vacant or idle and has been vacant or idle for the last 12 months. The recommendation outlines that the site comprises of undeveloped lands and a disused dwelling in an established residential area to the east of Clondalkin Village which is served by public services and facilities. Site is zoned for residential development and has the benefit of permission for a nursing home and site satisfies criteria of Section 5(1)(a) and is a vacant site which is suitable for residential and should be entered on the Register.

5.1.8. It is noted that the appellant sent correspondence to SDCC following receipt of the Section 7(3) notice indicating their concern at receipt of same and that works had commenced to develop the site (dated 21 Dec. 2018). An email response to same from SDCC (also dated 21 Dec. 2018) confirms their rationale for placing the site on the register and noting that a levy will not be charged on the site in January 2019 and if the site is no longer vacant or idle it will be cancelled and the appellant is invited to notify SDCC if this is the case.

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)(a) of the Act.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

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

- Site not vacant or idle for 12 months prior to Notice of Entry as appellant was in pursuit of development works at the site.
- Site is a development site where development of a substantial care home is underway;
- While site may be located in an area where there is a need for housing/suitable for housing the development underway is for a form of housing/accommodation necessary to facilitate the needs of the wider community and site cannot be described as vacant or idle.
- Notice of Proposed Entry issued (31st Oct. 2018) to appellant for the site after acknowledgement of valid commencement notice (23 Oct. 2018) in relation to building works with letters/receipts attached from SDCC.
- Appellants have at all times over 12 month period been in pursuit of relevant consents, with development now underway.
- Receipt for fire safety certificate sought attached.

- Urge board to accept appeal as site not vacant site nor is it idle and does not have any adverse effects on existing amenities.

6.2. Planning Authority Response

6.2.1. No response received.

7.0 Assessment

7.1. Vacant or Idle/Purpose of the Lands

7.1.1. In relation to the vacancy or otherwise of the site or part thereof, there are a number of considerations. Firstly, as outlined in Section 3.1 above, Section 5(1)(a)(iii) has been amended by Section 63 of the Planning and Development (Amendment) Act, 2018 which provides that it states that 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 will address both (I) and (II) in turn.

7.2. Vacant or Idle

7.2.1. The appellants reference the procedure by which a commencement notice for the development of the site was submitted to the PA days in advance of the site being placed on the Register. They outline the timelines and attach copies of correspondence and receipts to support same. These all relate to dates c. 23 October 2018. While the appellant indicates in the grounds of appeal that development has commenced it is not clear if it commenced prior to the placing of the site on the Register, 18 December 2018. There is no date provided of the actual commencement of development on the site. However, I note the email

correspondence from the appellant to SDCC dated 21 December 2018 would appear to suggest that it may have commenced prior to the 18th December 2018 but it is not clear. I note that the last PA site visit referenced in the reports is 30 October 2018. While I acknowledge the timing of the Notice, the email correspondence and the endeavours of the appellant to commence work on the site for the purposes of this Act and its implementation the appellant has not provided sufficient evidence to detail that for the 12 month period concerned, the 12 months prior to the site being placed on the Notice, in this instance from December 2017-December 2018 that that site was not vacant or idle.

- 7.2.2. This is the relevant period and on the basis of the information before the Board and while the Board may wish to accept the contents of the email submitted to the PA on 21 December 2018, I consider that for the purposes of clarity given the absence of definitive detail on the commencement date that the Notice should be confirmed. However, on my visit to the site it is clear that considerable construction work is underway on the site to implement the permission granted for a nursing home. While it appears counterintuitive to confirm that a now active site is placed on the Register as outlined above, the provisions of Section 10 of the Act can be implemented in my opinion. Section 10(1) states that *'the owner of a vacant site that stands entered on the register under section 6(2) shall notify the planning authority in whose functional area the site is located if it is no longer vacant or idle'*. I would suggest that the appellant should remedy the matter by using this section of the Act. For the Boards information, Section 10(2) of the Act states that *'if, at any time, a planning authority is satisfied that a site that stands entered on the register under section 6(2) is no longer a vacant site it shall cancel the entry on the register in respect of that site'*. This I would suggest is the most appropriate course of action for the owners of the site concerned.

7.3. Purpose of the Lands

- 7.3.1. Section 63 of the Planning and Development (Amendment) Act, 2018 provides a revised definition of Section 5(1)(a)(iii) of the Act with subsection (II) included and referring to sites which are 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.*”.

7.3.2. I note that the appellant does not claim that the site is being used for any specific purpose outside of the intended development. I do not therefore consider that this section of the Act is relevant to the subject site.

8.0 Recommendation

8.1.1. 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 that the site (Site ID 96) at Monastery Road, Clondalkin, Dublin 22 was vacant or idle for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 18th December 2018 shall be confirmed.

8.1.2. I would also recommend that the Board may include a note to the appellant within their Direction to the effect that, notwithstanding that the Notice in question has been confirmed, the provisions of Section 10 of the Act apply given that work has commenced on the site to implement the permission and that the appellant should notify the PA of this matter and request that the site is removed from the Register.

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, and

(c) the report of the Inspector

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