



An
Bord
Pleanála

Inspector's Report ABP-303523-19

Type of Appeal	Section 9 Appeal against Section 7(3) Notice
Location	Lands adjacent to Cluain Mhuire, Newtownpark Avenue, Blackrock, Co. Dublin
Planning Authority	Dun Laoghaire Rathdown County Council
Planning Authority VSL Reg. Ref.	VS-0079
Site Owner	The Health Services Executive Estates Office
Planning Authority Decision	Place on Register
Date of Site Visit	8 th October 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 Lands Adjacent to Cluain Mhuire, Newtownpark Avenue, Blackrock, Co. Dublin 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 - 0079, has one stated registered owner, the Health Service Executive.

2.0 Site Location and Description

- 2.1 The subject site (c. 0.96 ha) is located c. 1 km from the centre of Blackrock. The area is well served by public transport with the Dart station at Blackrock and a bus stop c. 200m to the south at Newtownpark Avenue. The site is on the eastern side of the grounds of St. Teresa's Convent, accessed from Temple Road. The site is also to the rear (east) of Cluain Mhuire, a HSE run care centre on Newtownpark Avenue. The site is separated from the convent grounds by a stone wall. It is overgrown with mature trees and other vegetation and appears to have been fenced off for a significant period. The site has a frontage to Newtownpark Avenue and there is a vehicular access south of Cluain Mhuire. It is bound by the grounds of Guardian Angels National School to the south, by residential properties to the east and north and by the convent grounds to the west. There was a 'Sale Agreed' sign at the Newtownpark Avenue site frontage on the day of inspection. The site had been advertised as a 'Residential development opportunity'.

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)(a) 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)(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.

4.0 Planning History

4.1. D15A/0036 PL06D.245945

- 4.1.1. Relating to the development site and an additional area to the immediate north, total area 1.27 ha. Permission granted for 48 residential units with vehicular access from Newtownpark Avenue.

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 zoned for residential development and the site is considered with regard to the provisions of section 5(1)(a), i.e. residential land.

- 5.1.2. 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 a site inspection on 12th November 2018 found the site to be vacant, photos are submitted. Aerial photography dated 24th June 2018, 7th May 2017 and 2nd June 2016 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'.

5.1.6 The current site owner, the HSE, made a submission to the planning authority dated 11th December 2018, which included the following main points:

- The site has planning permission for residential development under PL06D.245945, granted on 27th May 2018. It is intended to sell and develop the site in the near future.
- There have been delays in commencing work at the subject site due to issues of procurement, scheduling, tendering, etc., associated with the HSE being a state body.
- Site surveys in 2017 found the site to be infested with Japanese Knotweed, which was found in substantial quantities at two separate locations. The infestation is being assessed and treated. The submission is accompanied by a Biosecurity Report on the proposed treatment programme.
- The site does not negatively affect the amenity of the area. It adds to the amenity of the area by providing green space and mature trees. The site boundary to Newtownpark Avenue is a high stone wall, which prevents access that could result in anti-social behaviour. Refers to a VSL case at a site in Enniskerry, Co. Wicklow, ref. ABP-302104-18, where the Board decided not to include a site on

the Vacant Sites Register on the basis that there was no visible evidence of anti-social behaviour and no adverse effects on the amenities or character of the area.

- These matters are elaborated with similar points to those made in the grounds of appeal as summarised below.

5.1.3. The planning authority report on the above submission notes the following main points:

- The site has the benefit of planning permission for a residential scheme of 48 no. units, which has not been implemented.
- An unimplemented extant planning permission is not a relevant consideration in determining whether to apply the Vacant Site Levy, ref. relevant guidance in Circular PL 07/2016.
- The planning authority acknowledges the presence of Japanese Knotweed at the site. It considers that it is possible to treat the infestation with a shorter timeframe than that proposed by the site owner, ref. *'The Knotweed Code of Practice'*; published by the Environment Agency (UK). It is considered that the invasive species can be removed under strict guidelines that would allow for a development at the site.
- The case made by the landowner in relation to the impact of the site on the amenity of the area is relevant only in the assessment of sites that are considered to comprise 'regeneration land' and not 'residential land'.

5.1.4. 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 20th 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 the HSE Estates Office.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The appeal submitted on behalf of the HSE Estates Office repeats the points made above in relation to the extant permission at the site and the delays in commencing development at the site due to issues associated with the HSE being a State body and the treatment of Japanese Knotweed at the site. The process of selling the site had begun when the appeal was submitted to ABP on 22nd January 2019. The appeal is accompanied by a Biosecurity Report, which certifies that initial herbicide treatment of Japanese Knotweed was carried out at the site on 20th September 2018.

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 following additional points are noted:

- There are alternative means of treating Japanese Knotweed that would have significantly shorter timeframes than those proposed by the site owner.
- The matters raised in relation to effects on residential amenity are not relevant to the consideration of the application of a VSL to residential lands.

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 19th March 2019. The main points made may be summarised as follows:

- The submission includes a scientific paper entitled 'Optimising physiochemical control of invasive Japanese knotweed' by Jones, Bruce et. Al (2018), which concludes by stating:

"While no treatment completely eradicated F. japonica, a multiple-stage glyphosate-based treatment approach provided greatest control."

It is necessary to apply this treatment over three to four seasons to deplete the rhizome reserves and to effectively control the target vegetation. Treatment

began in 2017 and is due to continue until 2020 at least. It is submitted that the current treatment programme is the best solution for all parties concerned.

- Entry of the site on to the VSR would be counterproductive given that the site owner intends to sell it this year, ref. correspondence from Savills Estate Agent.
- While the site is not classed as 'regeneration land', it is important that it does not impact negatively on the amenity of the area while waiting to be sold and developed. It is considered that the site in its current condition creates a sylvan character in the area.

7.0 **Assessment**

7.1. The following matters are to be considered in this Appeal against Notice of Entry on the 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?
- Effects on Amenities

These matters may be considered separately as follows.

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

7.2.1. 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.

7.3. **Is the site suitable for housing?**

7.3.1. 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. 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.

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

7.4.1. The appellant submits that the site has the benefit of an extant permission under Reg. Ref. D15A/0036 PL06D.245945 and that development at the site has been delayed due to issues of procurement, scheduling, tendering, etc., associated with the HSE being a state body, also the ongoing treatment of a Japanese Knotweed infestation. 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 48 no. residential units at the site in 2018. No site works have taken place that might be deemed to constitute development. The appeal, dated 22nd January 2019, states that the site owner intended to sell the site and a ‘Sale Agreed’ sign was noted at site inspection on 8th October 2019. However, 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 has been granted. 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.

7.4.2. 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 12th November 2018 and on aerial photography (Google Earth) dated 24th June 2018, 7th May 2017 and 2nd June 2016. 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.

7.5. Effects on Amenities

- 7.5.1. The appellant submits that the site does not have any adverse impact on the amenities of the area and is not a location of anti-social behaviour. These matters refer to sections 5(1)(b) and 6(6) of the 2015 Act, which relate to 'regeneration' lands and not 'residential' lands and are therefore not relevant in this instance.

8.0 Conclusion

- 8.1. 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 12th November 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 20th 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 adjacent to Cluain Mhuire, Newtownpark Avenue, Co. Dublin, was a vacant site for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 20th December 2018 shall be removed.

10.0 Reasons and Considerations

10.1. 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 recorded date of site inspection, (12th November 2018) provided by the Planning Authority in its submitted documentation, and
- e) The absence of sufficient evidence to support the contention of the planning authority that the site was vacant and idle for the period of 12 months preceding the date of placing the site on the register.

The Board considers that it is appropriate that a notice be issued to the Planning Authority who shall cancel the entry on the Vacant Sites Register.

Sarah Moran
Senior Planning Inspector
October 8th 2019