



An  
Bord  
Pleanála

## Inspector's Report ABP-303527-19

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<b>Type of Appeal</b>	Section 9 Appeal against section 7(3) Notice
<b>Location</b>	Site at Mill Road, Saggart, Co.Dublin
<b>Planning Authority</b>	South Dublin County Council
<b>Planning Authority VSL Reg. Ref.</b>	365
<b>Site Owner</b>	Jackie Cosgrave
<b>Planning Authority Decision</b>	Place on Register
<b>Date of Site Visit</b>	27 July 2019
<b>Inspector</b>	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 Mill Road, Saggart, Co. Dublin. The subject site was entered on the Vacant Site Register on 18<sup>th</sup> December 2018 on the basis that the site was vacant under Section 5(1)(a) of the Act. The Notice was issued to Jackie Cosgrave.

## 2.0 Site Location and Description

- 2.1. The site which has an area of 1.4 hectares comprises an area of land to the rear of existing dwellings which front Mill Road which is located between Saggart Village and the N7. The site is relatively flat. It has an access onto Mill Road between two existing residential properties. It is adjoined on its remaining boundaries by Citywest Golf Club. The site is currently inaccessible with fencing forming its boundary with the public road.

## 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 18<sup>th</sup> 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—
  - (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 – South Dublin County Development Plan 2016-2022**

3.2.1. The site is zoned RES-N in the CDP the objective of which is to provide for new residential communities in accordance with approved area plans.

3.2.2. The South Dublin County Council Development Plan 2016-2022 was varied (Variation 1 & 2) on 21<sup>st</sup> 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. SD13A/0221** – Permission granted for demolition of dwelling and development of 44 residential units with a new entrance/exit into Mill Road with extension of duration granted until July 2023.

4.2. **Ref. SD15A/0086** – permission refused for modifications to above permission.

### **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 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 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 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 there is an extant permission on the site which is to be imminently implemented with agreement required on a number of conditions on the permission including the entrance arrangements which were significantly altered and the proposed contractor has been

engaged on another site with the site not vacant or idle as the owner is actively working to implement the permission.

- 5.1.3. A second PA report, entitled Register of Vacant Sites Planning Report and which is dated 18<sup>th</sup> 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 comprises an undeveloped greenfield site to the rear of existing houses which front onto Mill Road and includes frontage onto Mill Road. It states that there was no evidence of any recent activity on site at the time of the site visit and the site entrance appeared to be overgrown and unkempt.
- 5.1.4. It states that the submission received has been considered by the PA with any proposals to develop are noted but that proposals alone are insufficient to determine that a site is no longer vacant or idle. Considered that sufficient time has elapsed since then within which to commence the development notwithstanding issues referred to. 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.
- 5.1.5. 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 'emerging moderate sustainable growth town' of Saggart-Citywest in the core strategy of the SDCC Development Plan 2016-2022. Site is within the established built up area of Saggart 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 greenfield lands between Saggart Village and Rathcoole/Naas Road off Mill Road where there is existing housing and existing public services and facilities are available. Site zoned for residential development in SDCC 2016-2022 with planning permission in place since March 2014 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.

## 5.2. **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:

- Client recognises that 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 in this case and note that the 12 months concerned relates to 12 months prior to 18 December 2018.

- Section 5(1)(a) outlined and stated that in determining whether a site is vacant or idle Section 6(6) is outlined.
- Site cannot be considered vacant or idle as from period December 2017-2018 appellant actively engaged in addressing matters relevant to implement the permission granted under SD13/0221 which has 29 conditions a number of which require agreement which modified the scheme such that proposed entrance arrangements were significantly altered with appellant working to ensure permission can be implemented and conditions complied with.
- Appellants contractor been engaged to date on a housing project elsewhere which has delayed start of construction on the site.
- For past 12 months site has been subject of a development control process with genuine intent by the owner to bring the site forward for development with lands not idle for significant period of time and appellant cannot develop the site until pre-commencement conditions are complied with to satisfaction of the PA.
- Lands are maintained and not in a neglected condition with no anti-social behaviour taking place with the site having an agricultural appearance and does not have a negative visual impact from the roadside and appellants view that site in its current condition does not impact on the existing amenities in the area nor does it reduce the amenity provide by existing public infrastructure and facilities.

## **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—
- (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*.”.

I will address both (I) and (II) in turn.

## **7.2. Vacant or Idle**

7.2.1. The appellants contend that the site cannot be considered vacant or idle as from period December 2017- December 2018 they were actively engaged in addressing matters relevant to implementing the permission granted under SD13/0221 which has 29 conditions a number of which require agreement which modified the scheme such that proposed entrance arrangements were significantly altered with the appellant working to ensure that the permission can be implemented and conditions complied with. They also state that the appellant’s contractor has been engaged to date on a housing project elsewhere which has delayed start of construction on the site. This they consider provides that for the past 12 months the site has been subject of a development control process with genuine intent by the owner to bring the site forward for development with lands not idle for a significant period of time and appellant cannot develop the site until pre-commencement conditions are complied with to satisfaction of the PA.

7.2.2. While it is acknowledged that the appellant is striving to implement the permission granted on the site, this pre-commencement phase is not considered to comply with the spirit of the legislation which seeks to activate sites. The permission while essential to activate same is not an activation in itself and therefore it cannot be construed as providing that the site was not idle as provided for in the Act. I would also note that notwithstanding that the relevant period for the subject notice is December 2017-December 2018 that development has not yet commenced on the site.

## **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. There is reference to the site having an agricultural appearance but it is not stated that the site has an agricultural use. I do not therefore consider that this section of the Act is relevant to the subject site.

#### 7.4. **Section 6(6)**

- 7.4.1. The appellant references Section 6(6) of the Act which outlines the criteria to determine sites for the purposes of Section 5(1)(b) which relates to regeneration sites. This site was placed on the Register under the provisions of Section 5(1)(a) which is determined by Section 6(4) housing need and Section 6(5) suitability for housing and therefore the provisions of Section 6(6) are not relevant.

### 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 365) at Mill Road, Saggart, Co. Dublin 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.

### 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.

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Una Crosse  
Senior Planning Inspector

July 2019