



An
Bord
Pleanála

Inspector's Report ABP-303531-19

Type of Appeal	Section 9 Appeal against Section 7(3) Notice
Location	Site located to the east of the property known as 'Rathbeg', Stonebridge Road, Dublin 18
Planning Authority	Dun Laoghaire Rathdown County Council
Planning Authority VSL Reg. Ref.	VS-0077
Site Owner	Andrew Morrogh and Others
Planning Authority Decision	Place on Register
Date of Site Visit	3 rd of May 2019
Inspector	Erika Casey

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 site located to the east of the property known as 'Rathbeg', Stonebridge Road, Dublin 18 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(a)) and 5(2) of the URH Act 2015
- 1.2. The appeal site registered under VSL reference VS - 0077, has one stated registered owner, Peter Morrogh.

2.0 Site Location and Description

- 2.1 The subject site with an area of c. 0.37ha consists of an undeveloped field located to the east of the property known as 'Rathbeg' and to the west of Rathmichael National School. The site has road frontage onto Stonebridge Road and is bound by hedgerows, trees and fencing. The eastern boundary of the site comprises the route of a former rail line. Mature trees are located along the southern and eastern boundaries.
- 2.2 Development in the vicinity of the site is low density and suburban in character. The site is within 600 metres walking distance of Shankhill Village and is adjacent to 2 no. primary schools. The nearest bus stop is located c. 250 metres from the site on the Dublin Road. The site is within 1km walking distance of Shankhill DART station.

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 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 stated 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.

3.1.3. It is noted that Section 5(1)(a)(iii) has been amended by Section 63 of the Planning and Development (Amendment) Act 2018 which commenced upon coming into effect of the Act (19 July 2018). 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

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. There is an objective on the southern portion of the lands to *‘protect and preserve trees and woodlands’*.

4.0 Planning History

4.1 There is no recent planning history pertaining to the subject lands.

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 which in this case is Residential. It is stated that the subject site is not in residential use and is not being used for the purpose for which it was zoned.

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 the site was vacant on the date of the site inspection (November 2018) and is considered to have been vacant and idle for the past 12 months. Aerial

photography (dated June 2016 and May 2017) also verify that the site has been vacant and idle for a period of time in excess of the last 12 months.

5.1.5 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'.

5.2 Planning Authority Notice

5.2.1 Planning Authority decided under Section 7(3) to issue a Notice on 20th December 2018 referencing Sections 5(1)(a) 5(2) of the Act and stating that the site has been entered onto the Vacant Sites Register. The notice was issued to Mr. Peter Morrogh.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1 An appeal was received from IMG Planning on behalf of Andrew Morrogh, Julie McLees, Peter Morrogh and William Morrogh of 'Rathbeg', Stonebridge Lane, Shankhill, Dublin 18 on the 24th of January 2019 which can be summarised as follows:

- Submit that the Councils decision is grounded on a partial appreciation of the status and context of the land in question that in turn has erroneously led to the conclusion that the site meets the criteria as being a vacant site.
- Note that the subject lands are located to the south east of 'Rathbeg' a substantial late Victorian House that was acquired by the current owner's father in the 1960's. There is a formal lawn immediately to the south of the house. State that the subject site has always been used as an integral part of the overall landholding and has been used for grazing. It is maintained by the owners and is used for the amenity and convenience of the occupants of the house. State that during the period of the family's ownership, the land has never been used for any purpose other than as part of the garden of 'Rathbeg' and is not separate from the house either physically or functionally.

- State that the subject site does not meet the definition of a vacant site as it is part of a person's home and has not been vacant or idle for 12 months. Refer to Section 5 (2) of the Act and the definition of a 'home' which includes any garden or portion of ground attached to and usually occupied with the dwelling or otherwise required for the amenity or convenience of the dwelling. Submit that the site is part of the overall landholding of 'Rathbeg' and is effectively part of its garden. It is, therefore, a person's 'home' and not a site.
- Note that the Planning and Development (Amendment) Act 2018 amended the definition of what constitutes a vacant site.
- Do not contest that the land is situated in an area where there is a need for housing.
- Do not consider that the land is suitable for the provision of housing in its own right as it does not have independent access to the public road. Development would be dependent on access through the balance of the landholding and is unlikely that direct access would be granted onto Stonebridge Road due to restricted sightlines. Consider that the group of trees in the south east corner will reduce the extent of land that would be available for development. Also detail that the existing house is served by a septic tank and that additional connection to the existing foul sewer network are restricted due to insufficient capacity. Irish Water have advised that the recommended upgrade works will have to be assessed, designed and costed with implementation by 2020/2021. State that notwithstanding these constraints to development, the entire landholding including 'Rathbeg' and the subject site is on the market but that there is likely to be a delay before any development could commence.
- Dispute that the land is vacant. State that has been used for grazing, is maintained by the owners and is generally used for the amenity and convenience of the occupants of the house. Note that the most recent purchase of the land occurred in 1960 before it became residential land and before the commencement of Section 63 of the Planning and Development (Amendment) Act 2018.

- Consider that the site does not satisfy the criteria set out in Section 6(5) and 6(6) of the Act as the land is not suitable for the provision of housing in its own right.

6.2. Planning Authority Response

6.2.1 A response received from the Planning Authority to the grounds of appeal are summarised as follows:

- There would appear to be a fundamental divergence of opinions between the landowner and the Local Authority with regard to whether the subject lands fall under the definition of a 'home' as defined under the URHA 2015. In the definition of 'home' no provision or exemption is made for an individual's historical ownership/landholding should that not fall under the definition of a 'home'.
- Consider that the subject lands that comprise part of the owners overall historical landholding do not fall under the definition of 'home' as they comprise a greenfield site that is physically separated from 'Rathbeg House' by clearly demarcated boundaries. There is no evidence to suggest that the site was usually occupied with the dwelling, nor was there any evidence that the lands were required for the convenience of the dwelling. It is considered that the maintained gardens to the south and east of 'Rathbeg House' represent the garden/grounds that are occupied and required for the amenity or convenience of the dwelling. These areas are not include within the boundary of the site.
- Consider that there is a general vagueness and lack of evidence to the appellant's contentions, specifically in terms of how the lands are '*generally used to the amenity and convenience of the occupants of the house*'. The Local Authority found no evidence that would support this assertion nor was there any evidence of any agricultural activity. It is considered that any historical use of the site for grazing purposes is not a relevant matter.
- The appellant's assertion that the site is not suitable for the provision of housing is contradictory having regard to the current sales brochure for the site which states that a feasibility study for the site has been undertaken. The Local

Authority is of the opinion that the site is served by public infrastructure and facilities necessary to enable housing to be provided and serviced. In terms of the foul water network, an existing sewer runs along Stonebridge Road and connects with the existing 225mm diameter foul sewer that runs along the Dublin Road. Refer to the recently completed scheme to the north of the lands at Woodbrook (Planning Authority Reference D13A/0683) that connects by gravity to the 225mm public sewer. Other matters raised including protection of existing mature trees and access provision are matters that would be dealt with through the planning process.

- The criteria referred to by the appellant as set out in Section 6 (6) of the URHA 2015 relates to 'regeneration land' and not 'residential land'.

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. Introduction

7.1.1. This notice has been issued under the provisions of Section 5(1)(a) of the Act which relates to residential lands. The assessment undertaken by the Planning Authority to inform the placing of the site on the Register, which I outlined in section 5.1 above, refers to the tests included for residential under Section 5(1)(a) by reference to Sections 6(4) & 6(5) of the Act as is required for lands zoned for residential purposes.

7.1.2. Section 5(1)(a) of the Act stated 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.

7.1.3. As I note above, Section 5(1)(a)(iii) has been amended by Section 63 of the Planning

and Development (Amendment) Act 2018 which commenced upon coming into effect of the Act (19 July 2018). 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”.

Section 5 (2) of the Act states:

“In this section –

“site” means any area of land exceeding 0.05 hectares identified by a planning authority in its functional area but does not include any structure that is a person’s home.

“Home” in relation to a person, means a dwelling in which the person ordinarily resides (notwithstanding any periods during which the dwelling is vacant) and includes any garden or portion of ground attached to and usually occupied with the dwelling or otherwise required for the amenity or convenience of the dwelling.”

7.1.4 The appellants firstly contest the identification of the site as a vacant site. It is asserted that the subject site forms part of a person’s ‘home’ as defined in the Act and is used for the amenity and convenience of the occupants of the house. In my assessment I shall firstly address this issue.

7.1.4. In terms of Section 5(1)(a) (i), I would note that the appellants do not question the need for housing in the area and, therefore, I do not intend to address this matter further. My assessment will, therefore, address specifically Section 5(1) (a) (ii) (I) whether the majority of the site is vacant or idle and section (II) as to whether the site is suitable for housing. In respect of the latter provision, I shall have particular regard to Section 6 (5) of the Act which determines the suitability for housing having regard

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 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.

7.1.5 I note that the appellant also refers to Section 6(6) of the Act and that the site does not comply with the criteria therein. This section of the Act however, refers to a vacant site on regeneration land. The subject site has been identified as a vacant site on residential land and therefore, the provisions of Section 6(6) are not applicable (refer to Circular Letter PL7/20160).

7.2 Compliance with the Definition of a Vacant Site

7.2.1 The principle argument set out in the appellant's submission is that the subject site forms an intrinsic part of the 'Rathbeg' property and is used for the amenity and convenience of the owners. It is stated that it has never been used for any other purpose other than as part of the garden of 'Rathbeg'. It is noted that it has been used for grazing.

7.2.2 The Local Authority contend that the lands are physically separated from the main house, that there is no evidence that they were required for the convenience of the dwelling and that the maintained gardens to the south and east of the house represent the principle amenity spaces for the dwelling.

7.2.3 Having regard to the definitions set out in Section 5(2) of the Act, the subject site is clearly larger than 0.5ha and does not include a structure that is a person's 'home'. The definition of 'home' states that this can include *"any garden or portion of ground attached to and usually occupied with the dwelling or otherwise required for the amenity or convenience of the dwelling"*. The subject site is clearly not functioning as a garden to serve the dwelling. As acknowledged by the appellant, it has historically been used for grazing. The existing dwelling is served by formal landscaped gardens directly to the south and east of the main house. These in my view, constitute the principal amenity spaces serving the dwelling. The subject site

has no amenity function. Furthermore, the subject site is not directly adjacent to the subject house and is clearly physically separated from it by existing field boundaries and hedgerows. Having reviewed aerial photos and from observations on site, I am of the view that the subject site is not required for the amenity or convenience of the dwelling. The appellant in my view has not submitted any compelling evidence that this is the case.

7.3 **Suitable for Housing**

7.3.1 The appellants set out that the site is not suitable for housing due to access restrictions, existing mature trees on the site and infrastructural capacity issues in the foul sewer network. As noted by the Planning Authority, the subject site and adjacent landholding including 'Rathbeg House' are currently for sale and are being marketed as appropriate for residential development.

The Core Strategy

7.3.2 The subject site is zoned for residential development under the Dun Laoghaire Rathdown County Development Plan. It is located in an established urban area in close proximity to good public transport connections. I consider the proposed site to be entirely consistent with the provisions of the core strategy set out in the County Plan.

Whether the site was served by the public infrastructure and facilities (within the meaning of Section 48 of the Act 2000) necessary to enable housing to be provided and serviced

7.3.3 With regard to the foul sewer network, I note that the applicant has not submitted any technical evidence or correspondence from Irish water to demonstrate that such infrastructural capacity issues exist. In any event, I note from their submission, that if upgrade works are to be carried out, these will be implemented in the short term by 2020/2021. The Local Authority have refuted the assertion that there are capacity constraints noting that the site is served by public infrastructure and facilities and that the site can connect to an existing 225mm foul sewer located on the Dublin Road.

7.3.4 With regard to access to the site, I note that the site has extensive frontage to Stonebridge Road. There are a number of exiting vehicular access served from this road including Rathmichael Parish National School. Again the appellant have not submitted any compelling technical evidence to demonstrate that a vehicular access

to the subject lands cannot be facilitated.

- 7.3.5 In terms of the trees to be protected located to the south of the site, I do not consider that these are an impediment to the future development of the site and can be incorporated into a future development proposal at detailed design stage. In conclusion, I am satisfied that the site is served by adequate public infrastructure necessary to enable housing to be provided and serviced.

Whether there was anything affecting the physical condition of the land comprising the site which might affect the provision of housing

- 7.3.6 There are no factors affecting the physical condition of the land which may affect the provision of housing.

- 7.3.7 I consider that the site complies with the criteria set out in Section 6(6) of the Act and that the site is suitable for housing. There are no demonstrable constraints that would inhibit its development for residential use in accordance with the zoning objective for the site.

7.4 Vacant or Idle/Purpose of the Lands

- 7.4.1 The third consideration of Section 5(1)(a) is whether the site, or the majority of the site, is vacant or idle or used for a purpose other than housing. The owners dispute that the land is vacant or idle stating that it has been used for grazing and that it is generally used for the amenity and convenience of the occupants of the house. As detailed above, I am satisfied that the subject site does not serve any active recreational and amenity purpose associated with 'Rathbeg House'. The house is served by existing formal landscaped gardens which function as the primary amenity spaces for the dwelling.
- 7.4.2 With regard the purported use for grazing, I note that the appellant has submitted no evidence to demonstrate that this is the case. There was no grazing activity on the site during my site visit. The Planning Authority have also confirmed that during their site visit, no grazing activity was witnessed. The aerial photographs do not indicate that the use of the site for this purpose has occurred in the recent past. There is a paucity of information to demonstrate that the site has an active agricultural or grazing function. In this context, I am satisfied that there is no evidence to confirm that the site has an established use for the purpose of grazing and it, therefore, constitutes vacant or idle land.

8.0 Recommendation

8.1. I recommend that in accordance with Section 9(5) of the Urban Regeneration and Housing Act 2015 (as amended), the Board should confirm the entry on the register of site (VS-0077) was a vacant site for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 20th December 2018 shall be deemed to take effect from that date.

9.0 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,

(d) That the site does not comprise lands considered to be attached and included as a person's 'home' (in this instance Rathbeg House) and that the lands concerned were not required for the amenity or convenience of that dwelling,

(e) That the majority of the site is vacant or idle, there is a need for housing in the area, the site is suitable for the provision of housing, and that insufficient reason is put forward to cancel entry on the Vacant Sites Register.

the Board is satisfied that the site was a vacant site for the relevant period.

Erika Casey
Senior Planning Inspector

10th May 2019