



An
Bord
Pleanála

Inspector's Report ABP-303563-19

Type of Appeal	Section 9 Appeal against Section 7(3) Notice
Location	Site to the west of the Luas Green Line, Murphystown Way, Dublin 18
Planning Authority	Dun Laoghaire Rathdown County Council
Planning Authority VSL Reg. Ref.	VS-0081
Site Owner	National Asset Loan Management Designated Activity Company
Planning Authority Decision	Place on Register
Date of Site Visit	3 rd 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 to the west of the Luas Green Line, Murphystown Way, 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 - 0081, has one stated registered owner, National Asset Loan Management Designated Activity Company.
- 1.3. The Board should be aware that there is appeal against a Section 7(3) notice on the adjoining site – appeal reference 303563-19.

2.0 Site Location and Description

- 2.1 The subject site has an area of c. 0.44 ha and is located approximately 9km to the south of Dublin City Centre in the administrative area of Dun Laoghaire Rathdown County Council. It is located directly to the east of Junction 14 of the M50 and south of the M50 and Sandyford Business District. The site is located in close proximity to the Luas Green Line and the Glencairn Luas Station is situated approximately 100 metres to the south. The site forms part of a larger parcel of vacant land with the boundaries defined by the M50 to the north, Murphystown Way to the west and the Luas Green line to the east. The site itself is undeveloped and greenfield in character. There are a number of mature trees located along the southern boundary. Development to the south west of the site largely comprises of low density suburban housing. Glencairn House (the British Embassy) and associated grounds is located to the south east of the site.

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.

3.2.2. The site is located within the boundary of the Ballyogan and Environs LAP for which there is an objective to prepare an LAP. To date no LAP has been prepared. There is a recorded monument on the south east portion of the site - Castle -Tower House - 023-025. There is an objective to the south east of the site *‘To Protect and Preserve Trees and Woodlands’*.

3.2.3 There is a Long Term Road Proposal to the north west of the site (outside the defined site boundary) to provide a slip from the N31 Leopardstown Road onto the M50 southbound. There is also a Long Term Motorway Proposal on the M50 to the north of the site for a 3rd lane from the Sandyford Interchange to the M11.

4.0 Planning History

Planning Authority Reference D08A/0026

4.1 Permission sought In January 2008 for the construction of a substation building for the Luas Green line extension. Application withdrawn March 2008.

Adjacent Lands to the North West

Planning Authority Reference D04A/115/ABP Reference PL06D.211875

4.2 Permission refused by the Board in November 2005 for a development comprising 405 no. apartments in 6 no. blocks. Reasons for refusal related to excessive density, design and residential amenity impacts.

Adjacent Lands to the East and South East

An Bord Pleanála Reference 302138-18

4.3 Section 9 Appeal against Section 7(3) Notice. Property at Glencairn View, Murphystown Way, Dublin 18. Determined the site was not a vacant site.

An Bord Pleanála Reference 302156-18

4.4 Section 9 Appeal against Section 7(3) Notice. Site adjacent to Glencairn House, Murphystown Road, Dublin 18. Confirmed the entry on the vacant site register.

An Bord Pleanála Reference 302580-19 (SHD)

4.5 Permission granted by the Board in December 2018 for the demolition of an existing

house and outbuildings and the construction of 243 apartments, 98 houses, childcare facility and associated site works at Glencairn House.

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 a 3-bed residential unit, average monthly rent is €2,612 (October 2018) and average purchase price is approximately €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 dates of both site inspections (November 2016 and August 2018) and is considered to have been vacant and idle for the past 12 months. Aerial photography (dated May 2017 and June 2018) and chronological 'street view' images (April 2017 and June 2018) 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 National Asset Loan Management Designated Activity Company.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1 An appeal was received from the National Asset Management Agency in conjunction with the Receiver of Glencairn Developments, Mr. George Maloney on the 23rd of January 2019 which can be summarised as follows:

- Refers to Section 6 (5) (b) of the Act and that the Board shall determine whether or not a site was suitable for the provision of housing for the purposes of this part by reference to - (b) whether the site was served by the public infrastructure and facilities (within the meaning of the Section 48 of the Act 2000) necessary to enable housing to be provided and serviced.
- Notes that the Issues Paper published with the respect to the draft Ballyogan and Environs LAP within which the site is located includes the requirement for a new bridge over the M50 (west of Junction 14) which will cross the landholding, linking Murphystown Way to Leopardstown Road. The provision of this

infrastructural link is also an objective of the current Dun Laoghaire Rathdown County Development Plan 2016-2022.

- The LAP will provide more information on how the development of transport infrastructure and residential uses will be co-ordinated and integrated. The draft LAP has yet to be published and the detailed design and impact of the future M50 crossing are undetermined and subject to ongoing consultation. This is delaying the development of the site.
- Note that the draft Regional Spatial and Economic Strategy for the Eastern Midlands Region has recently been published and that the County Plan must be varied to align with the RSES. There is consequentially potential for further delays to the publication of the draft LAP.
- Submit that the site should not be included on the VSR as the determination of the route corridor for the M50 bridge crossing by the Council is impacting upon the ability to successfully progress a planning application. Consider that inclusion of the site is premature pending publication of the LAP.

6.2. Planning Authority Response

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

- The site does not contain any County Development Plan Roads Objective. The indicative route of the County Development Plan 'Long Term Road Objective' for the Murphystown Link Road does not traverse the subject site. The indicative route traverses an adjacent site to the north west at a distance of approximately 100 metres from the boundary of the subject site.
- Note that whilst the finalisation of policy documents including the draft LAP and Regional Spatial and Economic Strategy and Urban Development may have a bearing on the potential development at the site, these policy documents in no way restrict the preparation of a planning application in advance of their publication. This is evidenced by the considerable planning activity and development occurring in the Ballyogan area at present, including the Clay Farm scheme and the SHD application (ABP Reference 302580). It is

considered that should a planning application be brought forward, it would be given full consideration having regard to the relevant policy framework in place at the time.

- Highlight that the landowner has submitted no evidence to suggest that the site was not vacant for the duration of the 12 months concerned and that it continues to be vacant.
- The Local Authority remains of the opinion that the subject site meets the legislative requirements to be deemed a vacant site and thus recommends that An Bord Pleanála upholds the decision of the Local Authority and confirms the entry of the site on the VSR.

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 which is summarised as follows:

- States that the subject site and VS-0013 are intrinsically linked legally, physically and strategically. Current access to both sites is through one gate located on the south west of the site identified under VS-0013 and any future development will be through one access point along Murphystown Way. Both land parcels constitute a single site for the purposes of land use planning and the separation of ownership is merely a consequence of how security was attached to the respective loans, which were originally held by a single debtor. The Receiver has responsibility over the entire land parcel.
- Notes that there is a group of specimen trees in the southern corner of the subject site that are subject to an objective in the Development Plan that they are to be protected and preserved. It is likely that this element of the larger site will be reserved for the provision of open space and conservation of the trees with development taking place elsewhere on the site. States that the subject site was excluded from previous application boundaries until the completion of the LUAS line in 2008.
- States that the requirement to determine the definitive route corridor of the Murphystown Link Road and the alignment of the proposed M50 bridge element and associated interface with this site requires significant up front

design work and consultation with relevant stakeholders. This is delaying the preparation and submission of a planning application on both sites.

- Submit that in 2012 the Council applied to the Board for approval to construct the Leopardstown Link Road and Roundabout Reconfiguration Scheme which included the road through the wider site. The Board omitted this link road and one of the reasons related to design considerations associated with the alignment of the new bridge and its interface with adjoining lands north and south of the M50.
- The provision of this link is an objective of the current County Plan. The draft LAP will provide more detail on how the development of transport infrastructure and residential uses will be co-ordinated and integrated. As the draft LAP is unpublished, this has created uncertainty in determining the most appropriate development strategy for the site.
- Contends that the realisation of a development strategy will be impacted by the delay of various policy documents.
- DLRCC reference recently granted permission at Clayfarm and ABP Ref. 302580. These are only relevant in a sense that they provide precedent for density and height in the area. However, the development of the site was not subject to Development Plan infrastructure objectives, for which there remained uncertainty over design and layout.
- Consider that the site should not be included on the VSR as the determination of the route corridor for the M50 bridge crossing by the Council is impacting upon the ability to successfully progress a planning application. Inclusion in the register is premature until relevant matters surrounding this infrastructure are resolved.

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”.

7.1.4. 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. Nor does the appellant contest that the site is vacant or idle or that it is being used for a purpose that does not consist solely or primarily for residential purposes etc. My assessment will, therefore, address specifically section 5(1) (a) (ii) as to whether the site is suitable for housing. In this context, 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.

The Core Strategy

7.1.5 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 excellent 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

7.1.6 It is set out by the appellant that the subject site is functionally linked to the adjacent site to the north west (currently subject to appeal 303486-19). It is detailed that the site is in the control of the same Receiver and that it will be developed in conjunction with the adjoining lands. It notes that both sites are likely to share a common access as part of any future development proposal and that the subject site due to its character and presence of mature trees is likely to form part of the open space to serve the wider land holding.

7.1.7 Whilst the appellant's comments regarding land ownership are noted, I can see no impediment to the development of the subject lands either in isolation or in conjunction with the adjacent landholding. The development of both sites either individually or in tandem could facilitate a common access point. The issue of existing trees to be preserved and future open space provision is a matter for detailed design and does not impede the future development potential of the site for residential use.

7.1.8 The primary issue raised by the appellant relates to the prematurity of the development of the site pending the publication of the Ballyogan and Environs LAP.

It is detailed that there is a specific roads objective (also referenced in the County Plan) and a requirement to develop a new bridge over the M50 and that the LAP will provide further detail as to how the development of transport infrastructure and residential uses will be co-ordinated and integrated.

- 7.1.9 I would concur with the view of the Planning Authority, that the publication of the draft LAP is not an impediment to the development of the subject site and I note that a number of developments within the LAP boundary, including the adjacent site at Glencairn, have been progressed in the absence of the draft LAP. Indeed the issue of prematurity was given detailed consideration in the Inspector's Report with respect to application 302580 – 18.

“As is outlined in Section 6 above, the Planning Authority are in the process of preparing a Draft of the proposed Ballyogan Local Area Plan with said draft expected in early 2019. The subject site is located within the area defined to be covered by the LAP. However, I do not consider that the proposal is premature pending the adoption of the Ballyogan LAP given that the site is zoned for development and the specific objectives pertaining to the lands have been subject of considerable pre-planning discussions prior to the submission of this application.”

- 7.1.10 Similarly with respect to the subject lands, I am satisfied that a planning application could be progressed on the subject site in the absence of the LAP and in accordance with the provisions of the County Development Plan.

- 7.1.11 I would also highlight to the Board that the specific roads objective referred to by the appellant does not traverse the subject site and in fact crosses the site to the north west. Even if the subject site was to be developed in conjunction with the adjoining land holding, I am satisfied that an application could be progressed in the absence of the LAP as long as the development did not prejudice or inhibit the delivery of the said roads objective.

- 7.1.12 I note that the appellant has stated in their submission that the requirement to determine the definitive route corridor of the Murphystown Link Road and the alignment of the proposed M50 bridge element and associated interface with this site requires significant up front design work and consultation with relevant stakeholders and that this is delaying the preparation and submission of a planning application on both sites. Whilst this may be the case, I consider that such detailed design work can

be progressed and agreed with the Local Authority in the absence of an LAP. The fact that a planning application has been delayed due to ongoing design work is not a reason to preclude entry onto the VSR.

7.1.13 With reference to the draft Regional Spatial and Economic Strategy for the Eastern and Midlands Region and the appellant's assertion that the development is premature pending a variation to the County Plan to align with the strategy, I would concur with the view of the Planning Authority that this process would in no way restrict the development of the site. This is evidenced by the multitude of applications for housing development being progressed in Dun Laoghaire Rathdown, notwithstanding the fact that the Development Plan has not yet been varied to take into account the draft RSES. The subject site is zoned for residential development and its future development potential will be governed by the provisions and objectives of the County Development Plan as well as relevant government and departmental guidelines. The development of the site is in my view not premature pending a variation to the County Plan to account for the RSES.

7.1.14 In conclusion, I am satisfied that the site is served by adequate public infrastructure necessary to enable housing to be provided and serviced. Whilst there is a long term roads objective pertaining to adjoining lands, this does not directly affect the subject site. Whilst it is acknowledged that the subject site may be developed in tandem with the adjacent landholding, I am satisfied that detailed design works required to facilitate the long terms road objective including the development of a new bridge over the M50 could be progressed in the absence of an LAP. The development of the site can be progressed in accordance with the provisions of the County Development Plan. There are a number of precedents in the Ballyogan area where residential development has been progressed in the absence of the LAP.

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

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

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-0081) 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 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.

(e) That the development of the site is not premature pending the publication of the draft Ballyogan and Environs LAP; that the Long Term Roads Objective to provide a slip from the N31 Leopardstown Road onto the M50 southbound does not relate to the subject site and that a planning application could be progressed on the subject lands in accordance with the provisions of the County Development Plan.

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

Erika Casey
Senior Planning Inspector

10th May 2019