



An  
Bord  
Pleanála

## Inspector's Report ABP-304963-19

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<b>Type of Appeal</b>	Section 9 Appeal against Section 7(3) Notice
<b>Location</b>	Lands fronting Fonthill Road and to the rear of St. John's Road, Clondalkin, Dublin 22
<b>Planning Authority</b>	South Dublin County Council
<b>Planning Authority VSL Reg. Ref.</b>	SDS/VS091
<b>Site Owner</b>	Paul Crowley
<b>Planning Authority Decision</b>	Place on Register
<b>Date of Site Visit</b>	21 <sup>st</sup> September 2019
<b>Inspector</b>	Erika Casey

## **1.0 Introduction**

- 1.1. This appeal refers to a Section 7(3) Notice issued by South Dublin County Council, stating their intention to enter a site referred to as lands fronting Fonthill Road and to the rear of St. John's Road, Clondalkin, Dublin 22 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 SD/VS091, has one stated registered owner, Paul Crowley.

## **2.0 Site Location and Description**

- 2.1 The subject site with an area of c.0.27ha is located off St. John's Road in Clondalkin and is accessed via a narrow laneway. The site also has extensive frontage to the Fonthill Road. The site itself is undeveloped and is covered in scrub vegetation. It is bound to the front by palisade fencing and a block wall. Development in the vicinity is primarily low density housing and is suburban in character.

## **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 the 5th July 2019 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 subject site is located in the administrative area of South Dublin County Council and the statutory plan is the South Dublin County Development Plan 2016-2022. The site is zoned RES: *To protect and/or improve residential amenity.*

3.2.2 Section 1.2.0 of the plan sets out the overarching considerations that underpin the policies and objectives of the plan. These include sustainability with an emphasis on making better use of key resources such as land, buildings and infrastructure.

3.2.3 Section 1.4 identifies the aim of the NSS to consolidate the Dublin Metropolitan area and states that the county development plan has been drawn up to be consistent with the NSS. Under the plan, Clondalkin is designated a Metropolitan Consolidation Town.

**CS2 Objective 2** states it is an objective *‘To provide sufficient zoned lands to accommodate future population growth in Metropolitan Consolidation Towns.’*

3.2.4 Section 1.8.1 of the plan addresses vacant sites. It is detailed that active land management, including the implementation of the vacant site levy is key to realising the vision and objectives of the Core Strategy. The following objectives are set out:

## **H2 Objective 2:**

*‘To promote residential development through active land management and a co-ordinated planned approach to developing appropriately zoned lands at key locations, including regeneration areas, vacant sites and under-utilised areas.’*

## **H2 Objective 3:**

*‘To implement the Vacant Site Levy for all vacant development sites, as appropriate, in the County and to prepare and make publicly available a register of vacant sites, as set out in the Urban Regeneration and Housing Act 2015 (or any superseding Act).’*

3.2.5 It is further detailed under section 11.1.2 of the plan:

*‘The following lands zoned for residential or primarily residential purposes are included for the purposes as set out in the Urban Regeneration and Housing Act 2015 in relation to the vacant land levy:*

*Objective RES and RES-N zoned lands as they have capacity to provide for residential accommodation.’*

## **4.0 Planning History**

4.1 There have been a number of previous applications on the site which can be summarised as follows:

### **Application Reference SD17A/0139**

4.2 Permission granted in July 2017 for a development comprising 9 units and a new vehicular access road from St. John’s Road (located on lands owned by South Dublin County Council).

### **Application Reference SD16A/0317**

4.3 Permission refused in February 2017 for a pedestrian access gate at the intersection of Common’s Road and Fonthill Road.

## **Application Reference SD15A/0329**

- 4.4 Permission refused for a pedestrian access gate at the intersection of Common's Road and Fonthill Road.

## **Application Reference SD15A/0294/An Bord Pleanála Reference PL06SA.245900**

- 4.5 Permission refused by An Bord Pleanála in April 2016 for a residential development comprising 10 dwellings.

## **5.0 Planning Authority Decision**

### **5.1. Planning Authority Reports**

- 5.1.1 A Vacant Site Report was prepared for the site outlining the date of the visit to the site which was the 13<sup>th</sup> of November 2018, description of the area, zoning, planning history and the type of site for the purposes of the Act which in this case is Residential.
- 5.1.2 In terms of need for housing (tests outlined in Section 6(4)), it is stated that the Core Strategy projects a likely need for 32,132 additional housing units in South Dublin County Council over the 7 year period from 2015-2022. The Housing Strategy forecasts that 8,303 social housing units will be required during the period 2016-2022.
- 5.1.3 The average rent in South Dublin in 2019 (including year on year change) according to the Daft.ie Rental Price Report Q1 2019 is as follows:
- South County Dublin: €2,190 (6.7% increase)
  - West Dublin: €1,778 (7.7% increase)
  - Combined average: €1,984
- 5.1.4 The median purchase price for a dwelling in South Dublin, according to the CSO *'Market Based Household Purchases of Residential Dwellings'* has risen from €249,700 in 2014 to €330,000 in 2018.

- 5.1.5 The numbers on the housing list were 7,215 in 2019 and 624 persons were registered as homeless.
- 5.1.6 It is detailed that there are 98,387 existing residential units in the County, based on CSO Census 2016 figures. An analysis of daft.ie 2019 reveal that there were 854 no. properties available for sale and 103 no. properties available for rent in the County. As such, the proportion of properties available for sale/and or rent as a percentage of the overall housing stock in the County is 0.97%. It is considered, therefore, that there is a need for housing in the area.
- 5.1.3 In terms of suitability for housing (tests outlined in Section 6(5)) it is detailed:
- The subject site is zoned for residential use and is located within the designated Metropolitan Consolidation Town of Clondalkin in the Core Strategy of the South Dublin County Development Plan 2016-2022.
  - The site is within an established residential area and is adequately serviced by public transport infrastructure and facilities.
  - There is no evidence of anything affecting the physical condition of the lands which would affect the provision of housing.
  - Permission has been granted on the site for residential development.
- 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, or the majority of the site, is vacant or idle and has been vacant or idle for the last 12 months.
- 5.1.5 Report concludes that the subject site is a vacant site which is suitable for residential development and, therefore, the site should be entered on the Vacant Sites Register in accordance with the provisions of the Urban Regeneration and Housing Act, 12015 (as amended).

## 5.2 **Planning Authority Notice**

- 5.2.1 Planning Authority decided under Section 7(3) to issue a Notice on 5th July 2019 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. Paul Crowley. Prior to this a Notice of Proposed Entry on the Vacant Sites Register was issued on the 30<sup>th</sup> of November 2018.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

6.1.1 An appeal was received from Martin C. Ryan and Company Solicitors on behalf of Paul Crowley, 7, Elm Park, Blackrock, Drogheda, Co., Louth on the 23rd of July 2019 which can be summarised as follows:

- The site was not idle for the period of 12 months preceding the serving of the notice. Permission for a residential development was granted under application reference SD17A/139. However, client has been in negotiations with South Dublin Co. Co. to purchase the freehold title for the access road to the site. It has not been possible to develop the site without this. Negotiations regarding the title are nearing completion.
- State that the subject lands are cleared and they are not in a ruinous or neglected condition. Furthermore, as the site is landlocked it does not affect the existing amenities or reduce any amenity provided by the existing public infrastructure. Nor does it have any adverse effects on the character of the area.
- Once negotiations for the purchase of the freehold of the access road are complete, it is proposed to construct housing on the site to the benefit of the local community.

### **6.2. Planning Authority Response**

6.2.1 South Dublin County Council refers to the documentation it previously issued to An Bord Pleanala which informed the entry of the subject site on the vacant site register and has no further comment to add.

## **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 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. As set out above, the Planning Authority report accompanying the Notice of Entry to the Vacant Sites Register sets out detailed information regarding the housing and core strategy, the purchase price of dwellings, the number of households on the housing list and the availability of housing units to rent and buy in the South Dublin area. It is demonstrated clearly that there is a need for housing in the area.



7.1.5 My assessment will, therefore, address specifically Section 5(1) (a) (ii) as to whether the site is suitable for housing and (iii) that the site, or the majority of the site, is vacant or idle. In respect of the first 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.

Finally my assessment will address the other matters raised by the appellant regarding the extant permission on the site.

7.1.5 I note that the appellant also refers to Section 6(6) of the Act and that the site does to comply with the criteria therein i.e. that the lands are not in a ruinous and neglected condition and do not have an adverse effect on the character and amenity of the area. 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 **Suitable for Housing**

### The Core Strategy

7.2.1 The subject site is zoned for residential development under the South Dublin County Development Plan. The Core Strategy projects a need for over 32,000 additional residential units over the period 2015-2022. The site 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

7.2.2 I am satisfied that the site is served by adequate public infrastructure necessary to

enable housing to be provided and serviced. The site is located in an established urban area and there is an extant permission for residential development on the lands.

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

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

7.2.4 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.

**7.3 Vacant or Idle/Purpose of the Lands**

7.3.1 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.

7.3.2 The 2015 Act (as amended) requires the Board on appeal to look at the past condition of the site and determine if the site was vacant or idle, section 9 states.

*(2) On an appeal under this section the burden of showing that the site was not a vacant site for the duration of the 12 months concerned is on the owner of the site.*

*(3) Where the Board determines that a site was not a vacant site for the duration of the 12 months concerned or was no longer a vacant site on the date on which the site was entered on the register in accordance with section 6 (2) it shall give written notice to the planning authority who shall cancel the entry on the register in respect of that site.*

7.3.3 The relevant time period for this appeal extends 12 months back from the date on which the site was entered on the register, in this instance the 5<sup>th</sup> of July 2019. I note that the Planning Authority have stated that the site has been vacant for the duration of 12 months and I also note a site inspection date of the 13<sup>th</sup> of November 2018. The Planning Authority cannot categorically state that, in respect of the definition of vacant or idle in section 5(1)(a)(iii) of the Act, that the site was vacant and idle on the 5<sup>th</sup> of July 2018 which would comprise the commencement of the 12-month period.

7.3.4. The relevant time period is a very important factor and one upon which the 2015 Act is quite clear in its interpretation, section 6(2) states as follows:

*“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.”*

7.3.5 The Planning Authority should provide a clear chronological record to confirm site visits and provide a definitive assessment of the duration of twelve months, i.e. when the site was first visited and when most recently visited in relation to placement on the register. In this instance, the Planning Authority have not fully accounted for the duration of the twelve month period and the site visit was undertaken less than 12 months prior to the entry of the site on the register.

7.3.6 From my observations of the site and the details from the planning history of the site, it is highly probable that the site has been in the same or similar condition for some time. In this regard, it is most likely that the lands have been and continue to be vacant. However, it is not clear from the information presented by the Planning Authority that the relevant time period has elapsed. It is incumbent on any Planning Authority to have details of inspections which can clearly indicate that in their opinion the site was vacant or idle for the 12 months preceding placing the site on the Register. It is not sufficient to assume so.

7.3.7 Even though it is likely and probable that the lands have been vacant, in the absence of adequate documentary evidence, this is not certain. I, therefore, recommend that the Notice issued should be cancelled and the site should 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 relevant 12 month time period to elapse.

#### 7.4 **Other Issues**

7.4.1 The appellants principal ground of appeal is that there is an existing permission pertaining to the site – application reference SD17A/0139 and that it has not been possible to implement this due to ongoing negotiations with South Dublin Co. Co. regarding the acquisition of the freehold title relating to the access laneway.

7.4.2 In the matter of a current planning application or indeed an extant planning permission for the site, the Act is clear; the test for inclusion is the past condition of

the site from the date of entry on the Register. I refer to Circular Letter PL7/2016, Appendix 3, that states: “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.”

## 8.0 Recommendation

8.1 I recommend that in accordance with section 9(5) of the Urban Regeneration and Housing Act 2015, the Board should cancel the Notice stating that the lands fronting Fonthill Road and to the rear of St. John’s Road, Clondalkin, Dublin 22 was a vacant site for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 5<sup>th</sup> of July 2019 shall be removed

## 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 Senior Inspector,
- (d) The recorded date of site inspection, (13<sup>th</sup> November 2018) provided by the Planning Authority in its submitted documentation,
- (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 considered that it is appropriate that a notice be issued to the Planning Authority to cancel the entry on the Vacant Sites Register.

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**Erika Casey**  
**Senior Planning Inspector**

**24th September 2019**