



An
Bord
Pleanála

Inspector's Report ABP-305040-19

Type of Appeal	Section 9 Appeal against Section 7(3) Notice
Location	Site at Parson's Court bounded by Burgage Green to the west, Newcastle, Co. Dublin
Planning Authority	South Dublin County Council
Planning Authority VSL Reg. Ref.	SDS/VS370
Site Owner	Dermot P. Coyne and Vincent Buggy
Planning Authority Decision	Place on Register
Date of Site Visit	23rd October 2019
Inspector	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 site at Parson's Court bounded by Burgage Green to the west, Newcastle, Co. Dublin 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/VS370, has two stated registered owners, Vincent Buggy and Dermot P. Coyne.

2.0 Site Location and Description

- 2.1 The subject site with an area of c. 0.13ha is located off the R120. It is bound by Burgage Green/Burgage Crescent to the west and by residential dwellings to the south. It is an infill site and currently surrounded by hoarding. The site itself is overgrown and contains some waste construction materials and rubbish.

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”.

3.1.4 The Act defines ‘residential’ land at Section 3 as follows:

“residential” land means land included by a planning authority in its development plan or local area plan in accordance with section 10(2)(a) of the Act 2000 with the objective of zoning for use solely or primarily for residential purposes, and includes any structures on such land.”

3.1.5 Section 5 of the Act defines a site for the purpose of the application of the vacant site levy as:

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

‘Home’ is defined as:

“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 a usually occupied with the dwelling or otherwise required for the amenity of convenience of the dwelling.”

This applies whether the property is owner occupied or rented i.e. tenure neutral.

3.1.6 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.

3.1.7 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.

3.1.8 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.”

3.2. 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 - N: *To provide for new residential communities in accordance*

with approved area plans.

- 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.
- 3.2.4 The plan makes provision to accommodate the future population growth allocations as set out in the Regional Planning Guidelines for the GDA. Within Newcastle, the Plan (Table 1.8) identifies that there is a total of 28 ha. of available lands and capacity for c. 701 residential units. No additional residentially zoned lands in Newcastle were added in the 2016-2022 Development Plan.
- 3.2.5 The Plan (Table 1.10) identifies that some infrastructural improvements are required to facilitate future residential development and specifically that the Saggart/Rathcoole/Newcastle Sewerage Scheme is required to support long term development in the west of the County.

CS2 Objective 5: states it is an objective *‘To promote and support high quality infill development in existing built-up areas.’*

CS2 Objective 6: states it is an objective *‘To promote higher residential densities at appropriate locations, adjacent to town centres or high capacity public transport nodes (Luas/Rail).’*

- 3.2.6 Newcastle is identified in the Plan as a small town (section 1.7.4) and the following objectives are presented in the plan to implement the core strategy:

It is the policy of the Council to support the sustainable long term growth of Small Towns based on local demand and the ability of local services to cater for growth.

CS4 Objective 1: states that it is an objective *‘To support and facilitate development on zoned lands on a phased basis subject to approved Local Area Plans.’*

CS4 Objective 2: states that it is an objective *‘To provide sufficient zoned land to accommodate services, facilities, retail and economic activity.’*

3.2.7 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).'

3.2.8 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 two previous applications on the site which can be summarised as follows:

Application Reference SD07A/0579

4.2 Permission granted in February 2008 for a development comprising of 6 no. 2 bed apartments and 1 no. 3 bed apartment in 1 no. two/three storey block.

Application Reference SD04A/0953

4.3 Permission granted in October 2005 for the demolition of 4 no. existing single storey

cottages and the construction of 49 no. dwellings and one gym on a site which includes the subject site.

Adjacent Lands

An Bord Pleanála Reference PL06S.VV0008

4.4 Vacant site appeal on adjacent lands. Notice Confirmed on the 22 of November 2017.

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 which was the 23rd of September 2016, 23rd of May 2017, 16th of January 2018 and the 15th 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.

5.1.7 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 'Small Town' of Newcastle 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.

5.1.8 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.

5.1.9 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, 2015 (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 Vincent Buggy and Dermot P. Coyne. Prior to this a Notice of Proposed Entry on the Vacant Sites Register was issued on the 30th of April 2019.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1 An appeal was received from Dermot P. Coyne Solicitors on behalf of Dermot P. Coyne on the 1st of August 2019 which can be summarised as follows:

- States that the site is co-owned by the appellant (20%) and Vincent Buggy (80%). The Vincent Buggy share is controlled by Promontoria who refused to progress. Promontoria has now agreed to sell and an application for planning and immediate sale when planning issues will take place. The site has remained vacant due to the failure of Promontoria deciding what to do.

6.2. Planning Authority Response

6.2.1 No further comment.

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 matter raised by the appellant

regarding the disposal of the site.

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. S 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.

7.3.3 I note that the Planning Authority undertook 4 different site visits with respect of the site and have demonstrated that the site was a vacant site for the duration of the 12 months concerned. The appellant has not put forward any evidence to the contrary that the site was not a vacant site for the duration of the 12 months concerned. From observations on site it is clear that the site has been inactive for some time and is vacant and idle.

7.4 **Other Issues**

7.4.1 The appellants principal ground of appeal is that the site was not developed due to the delay with one of the co-owners of the site deciding what to do with the site. It is stated that it is the intent to lodge an application for planning on the site and then dispose of it.

7.4.2 It is evident from the documentation, that the sale of the site has not been progressed nor has planning permission been sought. In any event, change of ownership or the fact that it is proposed to dispose of the site has no impact upon the assessment of whether a site should be included on the VSR or not. Section 17 of the 2015 Act, sets out procedures in relation to the charging of the levy and change of ownership is relevant in that instance. Section 17 (1) states that where in any year there is a change in ownership of a vacant site, the amount of vacant site levy to be charged in respect of that site for that year, and for the preceding year, shall be zero.

7.4.3 However, irrespective of any change of ownership, the burden of demonstrating whether a site is vacant or not lies with the owner, as set out in Section 9(2) of the 2015 Act. In this instance, the site remains vacant, no planning permission has been sought and no development has commenced. The fact that there has been a delay in progressing development on the site due to a dispute between the owners does not negate the fact that it constitutes a vacant site. I am satisfied that the site meets the criteria for being determined as a vacant site and its placement on the register in this regard should be confirmed.

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 referred to that the lands Parson's Court bounded by Burgage Green to the west, Newcastle, Co. Dublin (SDS/VS370) was a vacant site for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 5th of July 2019 shall be deemed to take effect from that date.

9.0 Reasons and Considerations

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) The provisions of the South Dublin County Development Plan 2016-2022;
- (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
25th October 2019