



An  
Bord  
Pleanála

## Inspector's Report ABP-308356-20

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| <b>Type of Appeal</b>                   | Section 9 Appeal against section 7(3) Notice. |
| <b>Location</b>                         | No. 6 Malahide Road, Swords, Co. Dublin.      |
| <b>Planning Authority</b>               | Fingal County Council.                        |
| <b>Planning Authority VSL Reg. Ref.</b> | VS0120.                                       |
| <b>Site Owner</b>                       | Richard McCafferty.                           |
| <b>Date of Site Visit</b>               | 16 April 2021.                                |
| <b>Inspector</b>                        | Stephen Rhys Thomas.                          |

## 1.0 Introduction

- 1.1. This appeal refers to a section 7(3) notice issued by Fingal County Council, stating their intention to enter the site at No. 6 Malahide Road, Swords, Co. Dublin on to the Vacant Sites Register (VSR) in accordance with the provisions of section 6(2) of the Urban Regeneration and Housing Act 2015.

## 2.0 Site Location and Description

- 2.1. The subject site is located in Swords, County Dublin, along the Malahide Road close to the junction with Dublin Street. Swords Garda Station is located immediately to the north of the site, the Swords Central Shopping Centre is located to the southwest and to the east is the Pavilions Shopping Centre. The site has an open aspect to the Malahide Road with a 1.7 metre high concrete block wall along most of its length, lower on the northern portion. The remainder of the site is enclosed by high concrete block walls, with the prominent gable of the Pavilions Shopping Centre exhibiting a large piece of graffiti. The interior of the site is level and overgrown with grass, small amounts of litter have gathered here. No activity or use of any sort was evident on site.

## 3.0 Statutory Context

### 3.1. Urban Regeneration and Housing Act 2015 (as amended).

- 3.1.1. The Notice issued under Section 7(3) of the Act states that the planning authority is of the opinion that the site referenced is a vacant site within the meaning of Section 5(1)(b) of the Act. The Notice is dated 10 September 2020 and is accompanied by a map outlining the extent of the site to which the Notice relates.

## 4.0 Development Plan Policy

- 4.1. The **Fingal County Development Plan 2017 – 2023** is the operative development plan. As detailed on Sheet 8 Swords, the site is shown within the MC – Major Town Centre land use zoning where the objective is to: Protect, provide for and/or improve major town centre facilities.
- 4.2. The vision for this land use is to Consolidate the existing Major Towns in the County, (Blanchardstown, Swords and Balbriggan). The aim is to further develop these

centres by densification of appropriate commercial and residential developments ensuring a mix of commercial, recreational, civic, cultural, leisure, residential uses, and urban streets, while delivering a quality urban environment which will enhance the quality of life of resident, visitor and workers alike. The zone will strengthen retail provision in accordance with the County Retail Strategy, emphasise urban conservation, ensure priority for public transport, pedestrians and cyclists while minimising the impact of private car based traffic and enhance and develop the existing urban fabric. In order to deliver this vision and to provide a framework for sustainable development, masterplans will be prepared for each centre in accordance with the Urban Fingal Chapter objectives.

4.3. Chapter 3 of the Development Plan sets out the Council's objective in relation to Vacant Sites. Relevant objectives include:

- Objective PM24 - Identify and secure the redevelopment and regeneration of areas in need of renewal.
- Objective PM25 - Implement the Vacant Sites Levy for all vacant development sites in the County and prepare and make available a Register of Vacant Sites, as per the requirements of the Urban Regeneration and Housing Act 2015.

4.4. Land Use Zoning Objectives - 11.7 Vacant Land Levy – Residential and Regeneration Lands:

The Urban Regeneration and Housing Act 2015 sets out two broad categories of vacant land that the levy may apply to:

- Lands zoned primarily for residential purposes
- Lands in need of regeneration

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:

RS and RA zoned lands as they have capacity to provide residential accommodation.

The following zoned lands are included as lands with the objective of development and renewal of areas in need of **regeneration**:

LC & TC mixed use zonings as they offer great potential for the significant supply of housing and employment space, as set out in their Zoning Objectives. Furthermore, the local and town centre zoned lands are included given their critical role for sustainable neighbourhoods and wider communities.

MC zoned lands are included as there are significant vacant lands in this zone which provide an opportunity for the County and given the Zoning Objective: “protect, provide for and/or improve major town centre facilities.”

GE zoned lands are included because the Objective is “provide opportunities for the general enterprise and employment.” The primary objective is to facilitate long-term economic development in the region.

## **5.0 Planning History**

### **5.1. Subject site:**

PA reference FW19A/0402 - Demolition of boundary wall and construction of mixed use development including 109 bedroom aparthotel. 21 September 2020.

## **6.0 Planning Authority Decision**

### **6.1. Register of Vacant Sites Report:**

- 6.1.1. Report 1 - Site is zoned ‘MC – Major Town Centre’ and must be assessed as regeneration lands. Site inspections took place on 5 April 2019, 20 December 2019, 15 January 2020 and 2 June 2020. Extant planning permission on site, FW19A/0402. No planning enforcement on site. Site inspection photographs beginning September 2019, Google Street View images and Fingal County Council Aerial Photography 2018 show the condition of the site. The site is in a neglected state, antisocial behaviour has or is taking place (graffiti). The site accords with section 5(1)(b) of the 2015 Act, issue section 7(1) Notice. The report includes a photographic survey, proprietary aerial photograph (BlueSky Orthos) and map.
- 6.1.2. Report 2 – acknowledges the submission made by the owner in relation to the section 7(1) Notice. The planning history of the site is acknowledged. The temporary use as an ice rink is noted but not considered to be a full and active use. Temporary permission for a marquee structure and the expiration of that permission in March

2019 is noted. For the relevant time period the site was vacant and exhibiting forms of anti-social behaviour as evidenced by graffiti. The submission made by the landowner is summarised and each point is addressed and refuted by the planning authority, place on register recommended.

## **6.2. Planning Authority Notices**

6.2.1. A section 7(3) Notice issued on the 10 September 2020 referencing sections 5(1) and 5(2) of the Act, advising the owner that their site had been placed on the register, accompanied by a covering letter detailing section 5(1)(b) of the 2015 Act and a site map. The Notice was sent to six individuals:

- The Secretary PVBSEC Limited.
- The Secretary, Rivergate Property Swords Limited.
- David Gettings.
- David Gettings c/o Rivergate Property Swords Limited.
- Richard McCafferty, Rheinbabenstr, Dusseldorf.
- Richard McCafferty, c/o Rivergate Property Swords Limited

6.2.2. A section 7(1) Notice issued on the 16 June 2020, advising the owner that their site had been identified as a vacant site and invited submissions, also accompanied by a site map. The notice references sections 5(1) and 5(2) of the 2015 Act and the accompanying letter quotes section 5(1)(b) of the 2015 Act, but labels the paragraph with section 5(1)(a).

## **7.0 The Appeal**

### **7.1. Grounds of Appeal**

7.1.1. The landowner has submitted an appeal to the Board, against the decision of Fingal County Council to enter the subject site on the Register. The grounds of the appeal can be summarised as follows:

- The section 7(1) notice did not adequately detail why the site should be entered onto the register. Note that the appellant references section 5(1)(b) and re-produces that section from the 2015 Act, but labelled 5(1)(a).

- The site was acquired in 2018 and a planning application lodged. The site has been in use as a temporary skating rink (October to January). Before 2018 the site was also used for the same purpose though 2012-2018. Due to Covid restriction this use could occur in 2020 as intended by the owner.
- The site is well maintained and no antisocial behaviour is taking place.
- Permission for an aparthotel was refused by Fingal County Council in September 2018. Subsequently permission was granted in September 2020 for an aparthotel. This permission will be implemented soon.

The appeal is accompanied by the section 7(3) Notice.

## 7.2. **Planning Authority Response**

The rationale for including the site on the register were all given in a correspondence to the owner dated 19 August 2020 in relation to the submission received. Sufficient information is contained in the planning reports that accompany this site.

The use as a temporary skating rink is not considered a full use of the site, Circular letter PL 7/2016 is referenced. As per section 6(6)(b) of the 2015 Act the site exhibits graffiti and hence antisocial behaviour has occurred on the site.

## 7.3. **Further Planning Authority Response**

The planning authority, as of the 30 November 2020, state that David Gettings will no longer be corresponded with in relation to this case.

## 8.0 **Assessment**

### 8.1. **Introduction**

- 8.1.1. An appeal under section 9 of the Act, requires that the burden of showing that the site was not a vacant site for the 12 months preceding the date of entry on the Register is on the owner of the site. Section 9(3) of the Act states that the Board shall determine whether the site was 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. The subject site was entered onto the Fingal County Council VSR on the 10 September 2020.

8.1.2. The Section 7(1) Notice was issued under the provisions of Section 7(1) of the Act, to which the owner responded. The Section 7(3) Notice was issued under the provisions of Section 5(1)(b) of the Act which relates to regeneration lands. The assessment undertaken by the Planning Authority to inform the placement of the site on the Register, which I outline in section 6.1 above, refers to the tests included for regeneration lands under section 5(1)(b) and by reference to Section 6(6) of the Act as is required for lands zoned for regeneration purposes. The lands are zoned MC – Major Town Centre land use zoning where the objective is to: Protect, provide for and/or improve major town centre facilities, this MC zoning is identified by section 11.7 *Vacant Land Levy* of the operative plan as lands that can be considered as regeneration for the purposes of the levy.

8.1.3. The main concerns of the appellant are that; the site is not vacant but in temporary use as a festive ice skating rink, planning permission has been secured and will be implemented soon; and the site has no adverse affects on the amenities of the area. The planning authority do not agree and are satisfied that the lands are not in full and active use, the site has been vacant for some time, antisocial behaviour has occurred on the site and it is neglected and impacting on the character of the area.

## 8.2. Notices

8.2.1. The appellant has stated that the section 7(1) notice of intent to enter the site on the register did not adequately detail why the site should be considered for inclusion. The planning authority note that there is sufficient information contained in the planning reports that accompany the site analysis.

8.2.2. It is useful to point out the sequence of events in the context of the requirements of the 2015 Act. In relation to the procedure for entry on the register, section 7 of the Act requires the following:

*(1) Before entering a site on the register a planning authority shall give written notice to the owner of the site setting out the reasons for the proposed entry and the owner may make submissions in respect of the proposed entry to the planning authority in writing within 28 days after the date of such notice.*

*(2) Where a planning authority receives submissions in accordance with subsection (1) it shall consider those submissions and if it is of the opinion that the site was a vacant site for the duration of the 12 months concerned and*

*continues to be a vacant site it shall enter the site on the register in accordance with section 6(2).*

*(3) The planning authority shall give written notice to the owner of a vacant site when it is entered on the register.*

- 8.2.3. The planning authority followed this procedure by serving the section 7(1) notice on the 16 June 2020 and the section 7(3) notice on the 10 September 2020. The Act does not specify the content of notices, other than the notice shall set out the reasons for the proposed entry and the owner may make submissions. In this instance I note that the section 7(1) notice issued by the planning authority refers to sections 5(1) and (2) and this covers both residential and regeneration lands. However, the covering letter that accompanied the 7(1) notice provided more detail and referred to section 5(1)(a), but included the text and criteria for regeneration lands. According to the Planner's reports for the site, it was assessed under the criteria for regeneration lands. The second notice served under section 7(3) is written in the same format and refers to section 5(1) and (2), the accompanying letter correctly refers to section 5(1)(b) of the 2015 Act. It is apparent that a drafting error has occurred in the correspondence sent to the owners, not the Notice, it has remained the same.
- 8.2.4. Has the owner been disadvantaged by such an error? I note that the owner made a submission to the planning authority after the section 7(1) notice was served. The owner goes over the same grounds for not putting the site on the register as are contained in the current appeal. The planning authority considered the owner's submission, but proceeded to place the site on the register in the context of regeneration lands.
- 8.2.5. The appeal before the Board is made by the owner under the criteria for regeneration lands. The Notices served by the planning authority simply stated sections 5(1) and (2) and did not specify either residential or regeneration, not ideal but not critical. The Act does not state a Notice must differentiate between one and the other set of circumstances. The planning authority did accompany their Notices with covering letters to further inform the owner and in this instance the criteria for regeneration lands was set out, this is useful and recommended. However, in the case of the first Notice, the criteria was mislabelled as 5(1)(a). Has the owner been



disadvantaged by the planning authority's error, I think not. The initial submission made by the owner to the planning authority opened a channel to raise their concerns, this they did and were alive to the fact that their site was being considered for entry. The site was subsequently placed on the register and the owner was well positioned to appeal the decision of the planning authority. The planning authority have considered that the site was vacant and considered in the context of regeneration lands for the purposes of the Act, this is demonstrated by the Planner's reports and the text of the letters that accompanied the Notices. I am satisfied that the section 7(1) and 7(3) Notices were issued according to the correct procedure, contained the minimum information required by the 2015 Act and are therefore acceptable. I consider the drafting error in correspondence (not the notice) that placed an '(a)' where there should have been a '(b)' as a non-fatal flaw and one that did not prejudice the owner's right to appeal the planning authority's decision.

### 8.3. **Vacant or Idle?**

8.3.1. Section 5(1)(b) refers to lands considered to come within the meaning included for Regeneration Land and the tests for such sites are as follows:

*(i) the site, or the majority of the site, is vacant or idle, and*

*(ii) the site being vacant or idle has adverse effects on existing amenities or reduces the amenity provided by existing public infrastructure and facilities (within the meaning of section 48 of the Act of 2000) in the area in which the site is situated or has adverse effects on the character of the area.*

8.3.2. The site must meet both tests and I will address each in turn.

8.3.3. Vacant or Idle – The appellant advances no permanent use for the site but rather the repeated use of the site from October to January as a seasonal/festive ice skating rink. The planning authority agree that the use of the site for an ice skating rink did occur and has occurred each year between 2012 and 2018. However, the planning authority make the point that though periodic and ad hoc uses may occur, such temporary purposes would not be considered to be a full and active use of the site, Circular letter PL 7/2016 refers. On the day of my site visit I observed that the site was entirely empty. In addition, the applicant points out that a recent permission to develop the site will be implemented soon.

8.3.4. The 2015 Act does not list the types of uses that can be considered for regeneration lands, indeed the Act simply refers to lands that are vacant or idle. The burden of proving that the lands are not vacant or idle falls to the owner. The appellant has stated some sort of periodic or ad hoc use for the site and this is not disputed by the planning authority. I note the useful advice provided by Circular letter PL 7/2016, but even without that advice, I can see that the site had been effectively in use for four months out of a calendar year. Even if the temporal rather than spatial use of the site could be considered, in my mind the entire site has been left vacant for periods of up to eight months of the year and can only be seen as nothing other than entirely vacant or idle for the majority of the time.

8.3.5. In terms of planning permission for the site and an intention to develop soon. In my mind, the 2015 Act's references to development and use depends upon a close relationship with the meaning of these words in the Planning and Development Act 2000 (as amended). Consequently, the definitions of 'development' and 'use' are helpful and serve to illustrate how a site should be assessed in terms of the vacant or idle status. I am not satisfied that the design process leading to a planning application could be considered as development or use in terms of the 2015 Act. The appellant's case that the site is not vacant or idle because of the intention to implement a planning permission cannot be considered as meaningful use for the site so as to remove it from the register.

8.3.6. For the purposes of Section 5(1)(b) of the 2015 Act that refers to the site, or the majority of the site, is vacant or idle, I am satisfied that this is the case and the lands concerned were vacant or idle for the period concerned. If circumstances change and development progresses on the site, this is a matter for the owner to take up with the planning authority under Section 10(1) of the Act, as follows:

*The owner of a vacant site that stands entered on the register under section 6(2) shall notify the planning authority in whose functional area the site is located if it is no longer vacant or idle.*

8.3.7. Adverse Effects – The appellant states that the site is not neglected, and no antisocial behaviour is or was taking place on the site. The appellant claims that none of Section 5(1)(b)(ii) as expanded by Section 6(6) are met. The planning authority disagree and specifically mention the presence of graffiti as a factor that

indicates antisocial behaviour was or is taking place and that weed overgrowth indicates a lack of maintenance leading to neglect. All these factors result in a negative impact to the character of the area.

8.3.8. In order to be considered a vacant site under Section 5(1)(b) a site must also meet the test outlined in Section 5(1)(b)(ii), such as the site being vacant or idle has adverse effects on existing amenities or character of an area. This test is considered by reference to Section 6(6) of the Act which states that ‘a planning authority, or the Board on appeal, shall determine whether or not the site being vacant or idle has adverse affects on existing amenities or reduces the amenity provided by existing public infrastructure and facilities (within the meaning of section 48 of the Act of 2000) in the area in which the site is situated or has adverse effects on the character of the area for the purposes of this Part by reference to whether—

*(a) land or structures in the area were, or are, in a ruinous or neglected condition,*

*(b) anti-social behaviour was or is taking place in the area, or*

*(c) there has been a reduction in the number of habitable houses, or the number of people living, in the area, and whether or not these matters were affected by the existence of such vacant or idle land.*

8.3.9. Therefore, these are the tests which determine whether or not the site being vacant or idle has adverse affects on existing amenities or reduces the amenity provided by existing public infrastructure and facilities. The planning authority outlines in detail the condition of the site and examines the tests included in Section 6(6).

8.3.10. Firstly, the planning authority note the condition of the site, the existence of graffiti, the prevalence of weeds and the impact it is having on the amenities and character of the area. I found the site to be more or less in the same condition as described by the planning authority. There are no buildings on the site to be ruinous or neglected, however, the condition of the site is not comparable to other sites in the vicinity. The site interior can be readily viewed from the public road and it is clearly vacant and exhibits graffiti, unlike adjacent sites. The area is characterised by a number of elements: Malahide Road, shopping centres, shops and commercial units and houses in the vicinity, all well maintained and cared for. This site is the exception. It is because of the vacant nature of the subject site and its relatively unkept

appearance, when compared with other property in the area, that I am satisfied that the site is neglected in accordance with Section 6(6)(a) of the 2015 Act.

8.3.11. The second matter 6(6)(b) refers to anti-social behaviour which was or is taking place in the area. I did not detect excessive or even obvious levels of litter on the street outside the site. This is a location along a route frequented by pedestrians to and from local facilities where a certain degree of litter may be expected and not necessarily a signal that anti-social behaviour is or has taken place. It is possible that litter accumulates within the site because it is vacant but this is not obvious from the street. I did however, observe obvious incidences of graffiti, from the road and this would signal that antisocial is or has happened on the site in the past. I consider that anti-social behaviour in terms of the Act referring to such behaviour which was or is taking place, is in fact taking place in the area. I consider that the site would meet this test.

8.3.12. Because the Act includes commas and an 'or' between (a), (b) or (c), only one criteria is required to be met. In conclusion, I consider that two of the tests in Section 6(6) are met and that site has adverse effects on the character of the area and thus can be categorised as a vacant site as defined by Section 5(1)(b). In this context, I am satisfied that there is evidence that antisocial behaviour had taken place on the site and that the neglected condition of these vacant lands has an adverse effect on existing amenities and reduces the amenity provided by existing public infrastructure and facilities (within the meaning of Section 48 of the Act 2000) in the area in which the site is situated, particularly due to the strategic location of the lands in the centre of Swords village and its proximity to physical and social infrastructure.

## 9.0 Recommendation

9.1. I recommend that in accordance with section 9(5) of the Urban Regeneration and Housing Act 2015 (as amended), the Board should confirm the site (VS/0120), that was a vacant site for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 16 June 2020 shall remain.

## 10.0 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 Inspector;
- (d) The evidence that antisocial behaviour had or did occur on the site, the neglected condition of the site in the context of the surrounding area, and the majority of the site being vacant or idle,

the Board considers that it is appropriate that a notice be issued to the planning authority who shall confirm the entry on the Vacant Sites Register.

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Stephen Rhys Thomas  
Senior Planning Inspector

28 April 2021