



An
Bord
Pleanála

Inspector's Report ABP-311762-21

Type of Appeal	Section 9 Appeal against section 7(3) Notice.
Location	Site to the south of 'River View', Saint Colmcille's Court, Swords, County Dublin.
Planning Authority	Fingal County Council.
Planning Authority VSL Reg. Ref.	VS0130.
Site Owner	Robert Lynam and others.
Planning Authority Decision	Place on register.
Date of Site Visit	27 April 2022.
Inspector	Stephen Rhys Thomas

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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 the south of 'River View', Saint Colmcille's Court, Swords, County 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 appeal site is located towards the southern end of Swords Main Street, to the rear of a parade of shops fronting the street and opposite Swords Plaza. The site has frontage along a laneway that runs along the bank of the Ward River to the west.
- 2.2. The site is stepped across two levels in order to take account of the change in height between Swords Main Street and the lane along the bank of the Ward River. The eastern boundary of the site abuts a surface car park and the western boundary is demarcated by a wire fence to the back of the road. The northern boundary is marked by a fence and concrete block wall to apartments at Riverview, Colmcille's Court and the southern boundary falls away to a massed concrete wall to another surface car park. The site is overgrown with vegetation for the most part, although the section closest to the Ward River is cut back. There is a small amount of felled tree branch debris and litter to the centre of the site. The site is not visible from the Main Street of Swords, however, it is easily viewed from the laneway that runs along the bank of the Ward River.

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 29 September 2021 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:

None

5.2. Adjacent site:

F94A/0130 - Demolition of no. 60 and part of no 62 Main St. and for the erection of banking premises with offices over and associated signage on behalf of Ulster Bank Ltd. Permission sought for adjoining shop unit with offices over together with extension to existing car park

Condition 12 - A 14 metre deep strip of the river bank under the applicants control shall be preserved free of development and be available as open space if required to facilitate a riverside amenity scheme.

REASON: In the interest of the proper planning and development of the area.

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 20 December 2019 and 13 April 2021. No planning enforcement on site. Site inspection photographs beginning December 2019, Google Street View images and Fingal County Council Aerial Photography 2012, 2017 and 2018 show the condition of the site. The site is in a neglected state, antisocial behaviour has or is taking place (dumping and 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 and map.
- 6.1.2. Report 2 – Site inspections took place on 20 December 2019, 13 April 2021 and 8 September 2021, The report acknowledges the submission made by the owner in relation to the section 7(1) Notice. The demarcation of the vacant site is explained, given the site condition and appearance it can be considered for the register. For the relevant time period the site was vacant and exhibiting forms of anti-social behaviour as evidenced by dumping and 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 29 September 2021 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 four individuals all at the same address:
- Robert Lynam
 - Patricia Lynam
 - Sarah Lynam
 - Mark Lynam

6.2.2. A section 7(1) Notice issued on the 21 April 2021, 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.

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:

- Context and use of the site – the lands in question form part of a larger site, on which there are a number of uses. There are no internal boundaries or fences. The majority of the overall lands have an active use. The entire lands under joint ownership amount to 0.358 Hectares (folio DN241414F). Various planning applications have been lodged on this site, F94A/0130 is cited as an example. This permission was for car parking and included the requirement to keep free from development a 14 metre strip from the river's edge. There are a number of ongoing and active uses along Main Street, the front edge of the entire lands, these are listed by the appellant. The car park that serves these uses extends into the area identified by the planning authority. When the entire lands are included, ongoing uses amount to 54%, which is the majority of the lands.
- Invasive Species – the area of land subject to the vacant site register, is currently undergoing works to eradicate Japanese Knotweed, an invasive species. This work has been ongoing for two years and three more years may be necessary to achieve results, note letter from Michael O'Connor Coolquay Garden Centre. The site is not idle, as these eradication works have been and continue to be ongoing.
- Suitability/Need for Regeneration – it is noted that permission was refused on an adjacent site for 13 apartments, one of the reasons being that a route had not yet been finalised for a cycle pedestrian route along Schoolhouse Lane, reference F18A/0655 refers. The route has still not been selected and so it is

probable that if a planning application were to be lodged it may well be refused permission for the same reasons. The site is not suitable for regeneration purposes until the route is agreed.

The appeal is accompanied by a variety of enclosures that include: the notices, the response to the section 7(1) notice, VSR details, a solicitors letter regarding site entirety, garden centre letter, grant of permission F94A/0130, Dáil debate regarding invasive species and other information regarding Japanese Knotweed.

7.2. Planning Authority Response

Though the site forms part of larger lands, as the area registered is greater than 0.05 Hectares, it can be considered for inclusion.

The use of the wider site, the containment of an invasive species is noted and so too is condition 12 of F94A/0130.

However, the site in its current forms is neglected and is having an adverse effect on the character of the area, there is clear evidence of antisocial behaviour taking place. The site has been vacant for the relevant period and should stay on the register.

7.3. Further Response

The appellant reiterates and underline their original grounds of appeal.

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 29 September 2021.
- 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 placed on the register forms part of the wider lands in multiple ownership, the majority of which are in a combination of commercial uses and a car park. The site in question is affected by an invasive species currently undergoing eradication and this should be considered as a use for the site. The site cannot be considered to be a regeneration lands as a recent adjacent planning application was refused permission because the route of a pedestrian/cyclist corridor had not yet been selected. This means that a portion of the site cannot be used for regeneration until the route is finalised. The planning authority confirm their contention that the site is a vacant site within the terms of the 2015 Act and note condition 12 of permission reference F94A/0130 that requires a 14 metre strip along the back of the Ward River for amenity purposes.

8.2. **Site context**

8.2.1. The appellant claims that the site cannot be considered as a standalone site as it forms part of wider lands under active uses. In addition, part of the site is needed for amenity purposes by a planning permission condition and that because a cycle pedestrian route along Schoolhouse Lane has not yet been agreed, the lands cannot be developed. The planning authority have provided the details as to why they have decided to demarcate the site to be included on the register. The boundaries of the site conform to the edge of a surface car park, that is currently in full use. The actual vacant site comprises lands that are not currently in use and amount to more than 0.05 hectares.

8.2.2. The planning authority considered the site in terms of regeneration lands and followed the correct procedures to place the site on the register. There is nothing in the 2015 Act that states that a vacant site placed on the register should conform to

any upstanding boundaries such as walls or fences, nor is there any requirement to take in lands in a single ownership or subject to a single folio number. Section 5(2) defines a site to mean any area of land exceeding 0.05 hectares identified by a planning authority in its functional area but does not include any structure that is a person's home. I am satisfied that the site as selected by the planning authority can be assessed as a site for the purposes of the 2015 Act subject to the criteria for regeneration lands, a matter I consider below.

- 8.2.3. The appellant claims that the site would be burdened by a planning condition to preserve an amenity scheme and objectives in the development plan to facilitate a cycle corridor. I can see that the Fingal Development Plan includes an indicative cycle/pedestrian route along the laneway that runs beside the bank of the Ward River. In addition, I note that an historic planning condition from a permission in the 1990s seeks to preserve a 14 metre strip from the river bank free from development. In my mind these matters do not restrict the development of the majority of the site and do not therefore automatically prevent the site from being placed on the register. It is more than likely that if a cycle route and amenity corridor were to be developed, it would be in tandem with local landowners and to the mutual benefit of the community. This in turn would achieve the overall objective on MC zoned land to protect, provide for and/or improve major town centre facilities. Finally, I note that no recent planning application for the site has either been lodged or decided upon to determine if in fact, the site is constrained by such zoning objectives. I am not satisfied that as a town centre site, subject to the well-grounded town centre objectives to improve facilities that the site is hampered or denied the opportunity to be developed in accordance with the MC zoning. The site therefore can be considered for inclusion in the register.

8.3. **Invasive species**

- 8.3.1. In this case the appellant states that the presence of an invasive alien species (Japanese Knotweed) on the site meant that the site could not be developed or landscaped until an eradication programme has been successfully completed (up to two years and three more years may be necessary). The landowner has sought the services of an approved landscape contractor to carry out the eradication programme and this constitutes a use for the site and an intention to carry out development in the future.

8.3.2. I am of the view that the ordinary maintenance to remove or control an invasive alien plant species should have or should be taking place on the site, in any case. Despite the owner's ongoing efforts to eradicate the problem, I consider that the presence of an invasive alien plant species on the site is not such a thing that would stop development of the site, as in many cases the removal of such a thing is part and parcel of site development works. I do not accept that the presence of an invasive plant species has such an effect on the lands to prevent development or that its eradication can be considered to be an actual use for the site. These and other matters are assessed in greater detail under section 8.4 of my report.

8.4. **Vacant or Idle?**

8.4.1. 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.

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

8.4.3. Vacant or Idle – The appellant advances no actual physical use for the site in question but rather suggests that the active uses on the overall lands in the ownership of all the landowners to be the majority of what should be considered to be the site. In addition, the ongoing maintenance in terms of the control of an invasive species is offered as a use for the particular site in question. The planning authority note the control of an invasive species but cite the actual condition of the site and lack of a use as the reasons for inclusion on the register.

8.4.4. On the day of my site visit I observed that the site was in an overgrown state and that information signs notified the public that the ongoing control of an invasive species was being carried out. 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 not stated a physical use for the site but claims that the

temporal action of controlling an invasive species should be considered to constitute a singular use for the site.

8.4.5. In my mind, the 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 act of eradicating an invasive species to be an actual use for the site. The appellant's case that the site is not vacant or idle because of the exercise of eradicating an invasive species cannot be considered as meaningful use for the site so as to remove it from the register. It is, in my mind a consequence of land ownership that the control of an invasive species falls to be carried out by the responsible owner. It cannot therefore be considered to be a use for the site as in the ordinary meaning of the term. I am satisfied that for the relevant period the site was vacant, had no defined use and should be considered for placement on the register.

8.4.6. 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. I do not accept the appellant's contention that the vacant site should be extended to include overall lands and that such an inclusion would be the majority of a site. I have accepted that the planning authority have identified a vacant site, as part of an overall ownership profile and as such the 2015 Act simply states that such sites should be greater than 0.05 Hectares and not include a person's home. The site as demarcated by the planning authority meets this definition subject to the criteria outlined by section 5(1)(b) and 6(6) of the 2015 Act. The site has been defined by the planning authority and 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.

8.4.7. Adverse Effects – The appellant states that the site is not neglected, it is fenced and a programme of invasive species eradication is ongoing. 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 neglected nature of the site and the presence of litter and graffiti as factors that indicate antisocial behaviour is or was taking place.

8.4.8. 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 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. 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.

8.4.9. 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).

8.4.10. Firstly, the planning authority note the condition of the site and the existence of litter and graffiti and the impact it is having on the amenities and character of the area. I note that the site boundary to the laneway along the Ward River is open and allows a clear view of the site interior by passers-by. The overgrown condition of the site

cannot easily be ignored and is affecting the overall character of the area. 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 because of a low wire fence treatment that allows unobstructed views, this has the potential to negatively influence the character of the area. The wider area is characterised by a number of elements: the sylvan character of the Ward River, a commercial car park to the south and east and the rear of apartments at Riverview, Colmcille's Court. It is because of the vacant nature of the subject site and its relatively neglected 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.

- 8.4.11. The second matter 6(6)(b) refers to anti-social behaviour which was or is taking place in the area. I did detect a fair degree of litter on the site but not on the lane outside the site. The site is not easily viewed from Swords Main Street, but it is easily overseen from the car park and also from the laneway that runs along the Ward River. It is highly likely 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.
- 8.4.12. In terms of a reduction in the number of habitable houses, or the number of people living, in the area. I find that there is no hard evidence either way to suggest that there has been a reduction in the number of habitable houses, or the number of people living, in the area.
- 8.4.13. 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 2 of the tests in Section 6(6) are met and that site has adverse effects on the character of the area and that antisocial behaviour was or is taking place, so thus can be categorised as a vacant site as defined by Section 5(1)(b)(ii). In addition, I am satisfied 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 town centre 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/130), that was a vacant site for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 29 September 2021 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 neglected condition of the site in the context of the surrounding area, that anti-social behaviour was or is taking place in the area and that 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.

Stephen Rhys Thomas
Senior Planning Inspector

29 April 2022