



An  
Bord  
Pleanála

## Inspector's Report PL06S.VV0008

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<b>Type of Appeal</b>	Section 9 Appeal against section 7(3) Notice.
<b>Location</b>	Site bounded by Burgage Green to the north, Burgage Crescent to the west and Newcastle Boulevard to the south, Newcastle, Co. Dublin.
<b>Planning Authority</b>	South Dublin County Council.
<b>Planning Authority VSL Reg. Ref.</b>	No. 153
<b>Site Owner</b>	Cairn Homes Limited
<b>Date of Site Visit</b>	7 <sup>th</sup> September, 2017
<b>Inspector</b>	Stephen Kay

## **1.0 Introduction**

This appeal relates to a notice issued by South Dublin County Council under s.7(3) of the Urban Regeneration and Housing Act, 2015 stating that a site bounded by Burgage Green to the north, Burgage Crescent to the west and Newcastle Boulevard to the south, in Newcastle, Co. Dublin had been entered on the vacant sites register.

## **2.0 Site Location and Description**

The site the subject of this appeal is located in a residential area to the south east of the centre of Newcastle village. The site is bounded to the west by a street, Burgage Street / Burgage Crescent to the west of which there are undeveloped lands. To the north, east and south the site is bounded by developed residential lands.

The site is currently undeveloped and is surrounded by a hoarding. There is a vehicular access gate off Burgage Crescent.

## **3.0 Planning Authority Decision**

### **3.1. Planning Authority Notice**

The Planning Authority issued a notice dated 19<sup>th</sup> May, 2017 which advised the site owner that the subject site had been identified as a vacant site by reference to section 5(1)(a) and 5(2) of the Urban Regeneration and Housing Act 2015. The notice, issued in accordance with section 7(1) of the Act, stated that particulars of the site would be entered on the Vacant Sites Register. The notice was accompanied by a map outlining the site boundary.

### **3.2. Register of Vacant Sites Reports**

The reports of two site inspections undertaken in September, 2016 and May 2017 are presented on file. These reports conclude that the majority of the site is vacant or idle, that this has been the case for the previous 12 month period, that the site is

adequately serviced and there is nothing that affects the lands to make it unsuitable for housing. The reports conclude by recommending that the site be included on the vacant sites register.

## 4.0 Development Plan Policy

### 4.1. Land Use Zoning

The site is zoned Objective RES-N under the provisions of the South Dublin County Development Plan 2016-2022. This objective is as follows, *'to provide for new residential communities in accordance with approved area plans'*.

### 4.2. Other Relevant Policies and Objectives

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.

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.

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.

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).’*

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.’*

## 5.0 The Appeal

### 5.1. Grounds of Appeal

The following is a summary of the main points raised in the appeal submitted by the appellant:

- That there is a significant error in the notice issued dated 19<sup>th</sup> May, 2017. Specifically, the notice relates to lands that are not in the ownership of Cairn homes, these being the north east corner of the site. Submitted that this makes the notice invalid in its entirety or at least invalid in so far as it relates to the liability of Cairn Homes for that part of the site.
- That parts of the site are zoned open space and village core in the Newcastle LAP, 2012 and was identified for residential development in the masterplan.
- That the site was part of a larger area that was granted planning permission under Ref. SD05/0344 and which was extended to 3<sup>rd</sup> November, 2017. This permission could be further extended.
- That Cairn Homes acquired the site in February 2016 when the previous owner Maplewood Developments was in receivership. Full ownership of the site only passed from the receiver to Cairn Homes in September, 2016.

- Since September, 2016 Cairn Homes have been proactive in progressing development of the site. Work on the site has been undertaken by land surveyors, MOLA architecture and DBFL Consulting Engineers. The next step is the submission of a masterplan to the council for agreement.
- In the interim at the request of the local authority, Cairn Homes have been engaged with the council in the design and construction of a play park on the site.

## 5.2. Planning Authority Response

No submission received.

## 6.0 Assessment

- 6.1. By reference to the Planning Authority notice, it is noted that the site comprises residential land for the purposes of the Vacant Site Levy.
- 6.2. With regard to the procedural issues raised by the appellant in this case and specifically the contention that the first party is not the owner of the entirety of the lands included in the notice issued I note that the extent of the area which it is contended are not in the ownership of the appellant is indicated in the appendices to the appeal submission. These lands comprise the north eastern section of the site as indicated in the notice issued by the Planning Authority. On this issue I would note firstly that the extent of the area which it is contended is not in the appellant's ownership is relatively small compared to the overall extent of the site. Exact areas are not available, however it would appear that the extent of the area in dispute is less than 20 percent of the overall site area. It is therefore my opinion that the majority of the site is covered by the notice and that the site complies with the requirements for a vacant site set out in s.5(1)(a)(111) of the Urban Regeneration and Housing Act, 2015 (The Act).

- 6.3. Notwithstanding the above, the appellant has not provided any documentary evidence to support the statement that the entirety of the site covered by the notice is not in their ownership. I note that under s.9 of the Act the burden of proof in making a case on appeal rests with the appellant. It is my opinion that this requirement has not been met in this instance and clear documentary evidence is required for the claims regarding ownership to be substantiated. It is also my opinion that any issue regarding ownership and the legality of the notice issued is a matter for the appellant and the Planning Authority in the first instance.
- 6.4. The appellants also raise an issue regarding the date that ownership and full control of the site was acquired by them. It is stated that Cairn Homes (the appellants) acquired the site in February 2016 when the previous owner (Maplewood Developments) was in receivership. It is further stated that full ownership of the site only passed from the receiver to Cairn Homes in September, 2016. As with the extent of site ownership issue discussed above, no documentary evidence to support the dates stated by the appellant have been presented with the appeal and the provisions of s.9 of the Act regarding the burden of proof are again in my opinion of relevance to this issue.
- 6.5. Notwithstanding the above, I recognise the case made by the appellants that they state that they did not have full control over the site for the full 12 month period prior to the date of entry of the site on the register (19<sup>th</sup> May, 2017) and I recognise that there is some merit in the case made. There are, however, no provisions within the relevant legislation that provides for notices to only be issued when a period of 12 months in the same ownership have elapsed, and there does not therefore appear to me to be any basis under the legislation by which the notice issued could be deemed to be invalid or deferred on this basis. In the circumstances of the appeal site it is also worth noting that the site has the benefit of an extant grant of planning permission for residential development (Ref. SD05/0344) which has been extended to 3<sup>rd</sup> November, 2017 and which, as highlighted by the appellant, could potentially be further extended. Were the appellant to commence works on foot of this or any other grant of permission before the requirement for first payment of the levy in January, 2018 then no obligation to pay the levy would arise. The appellants would

appear to have had significant opportunity to prepare to implement this extant permission as, based on the information presented in their appeal, they acquired the site in February of 2016.

- 6.6. The appellant has questioned the zoning of the site and contend that under the Newcastle LAP, 2012 parts of the site are zoned open space and village core. The appellant is correct that the site is shown sub divided into residential areas, open space areas and a village core in the LAP, however under the main zoning contained in the *South Dublin County Development Plan, 2016-2022* the site is zoned Objective RES-N in its entirety. Objective RES-N has the stated objective '*to provide for new residential communities in accordance with approved area plans*'. The entirety of the site is therefore zoned for residential development and, in my opinion, comes within the meaning of '*residential land*' as defined in s.3 of the Act being land identified in the development plan for use solely or primarily for residential purposes.
- 6.7. With regard to the issue as to whether the site is vacant within the meaning of s.5 of the Act, the planning authority have submitted a statement of housing need. This statement sets out the significant number of new residential units required for the South Dublin Area over the 2015-2022 period as set out in the Regional Planning Guidelines. The lack of housing supply as evidenced by rapidly rising prices and the significant numbers on the social housing list and homeless register are also highlighted. On the basis of the information presented, I consider that there is a clear need for housing in the area of the appeal site. The suitability of the site for housing is, in my opinion, apparent by its location within an established settlement and its zoning for residential use. From an inspection of the site it is my opinion that the site, or the majority of the site is vacant or idle. On the basis of the above, it is my opinion that the appeal site meets the requirements specified in s.5 of the Act for a vacant residential site.
- 6.8. In conclusion, based on the information contained on file and my inspection of the site I am satisfied that the subject site was vacant and idle on the date of my site visit and that no information has been submitted by the site owner to refute the findings of South Dublin County Council that the site has been vacant and idle in the 12 months preceding the date of entry of the site on the register. I am therefore satisfied that the majority of the overall site as identified is vacant or idle and that the requirements

of s.5(1)(a)(iii) and s5(1)(b)(i) of the Urban Regeneration and Housing Act, 2015 are met in this case.

## 7.0 Recommendation

I recommend that the Board should determine that the site bounded by Burgage Green to the north, Burgage Crescent to the west and Newcastle Boulevard to the south, Newcastle, Co. Dublin was vacant or idle for the duration of the 12 months preceding the date of entry on the Vacant Sites Register on 19th May, 2017. It is therefore recommended that the entry of the site on the vacant Sites Register should be confirmed.

## 8.0 Reasons and Considerations

### 8.1. Having regard to

- (a) The evidence placed before the Board by the Planning Authority in relation to the condition and use of the site over the relevant period,
- (b) The evidence in the appellant's submission and
- (c) The report of the Planning Inspector

the Board is satisfied that the majority of the site was vacant or idle for the relevant period.

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Stephen Kay  
Planning Inspector

8th September, 2017