



An
Bord
Pleanála

Inspector's Report ABP-301166-18

Type of Appeal	Section 9 Appeal against section 7(3) Notice
Location	Western Section of Gort Mhuire and adjoining lands to the south and southeast of Gort Mhuire, Wyckham Place, Wyckham Point, Dundrum
Planning Authority	Dun Laoghaire Rathdown County Council
Planning Authority VSL Reg. Ref.	VS-0008
Site Owner	Irish Province of the Order of Carmelites
Planning Authority Decision	Place on Register
Date of Site Visit	16 August 2018
Inspector	Una Crosse

1.0 Introduction

- 1.1. This appeal refers to a section 7(3) notice issued by Dun Laoghaire Rathdown County Council, stating their intention to enter a site referred to as Western Section of Gort Mhuire and adjoining lands to the south and southeast of Gort Mhuire, Wyckham Place, Wyckham Point, Dundrum, Dublin 16 on to 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 VS - 0008, has one stated owner, with the Notice issued to Whitefriars, Carmelite Provincial Office at Gort Mhuire on 14 February 2018. The appeal was made on behalf of the Irish Province of the Order of Carmelites.

2.0 Site Location and Description

The site, which has an area of approximately 3.46 hectares, is located to the east of Wyckham Way/Ballinteer Road (R826). The site is largely flat with level changes to the north and is adjacent to and to the rear of the property known as Gort Mhuire which comprises a large period property which has been extended to the north east, east and south east by means of large institutional elements. The site also includes a church to the front of the property and a tower which adjoins the subject site. The site to which the levy relates comprises a car park area which is set out in cobblelock paving and which includes a barrier at the entrance and which has a stated area of c.2,500 sq.m. The remainder of the site comprises a greenfield adjoined to the east and south by existing residential development.

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 14th February 2018 and is accompanied by a map outlining the extent of the site to which the Notice relates.
- 3.1.2. It is noted that the definition of vacant or idle has been amended by Section 63 of the Planning and Development (Amendment) Act 2018 which commenced upon the coming into effect of the Act. 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 site is zoned objective A' to protect and/or improve residential amenity in the Dun Laoghaire Rathdown County Development Plan 2016-2022.

4.0 Planning History

D07A/1537 – permission was granted for a new car park for 42 cars to the north east of Gort Mhuire House, adjustments to existing car parking and existing driveway provision of disabled parking and associated new lighting. It was noted that Gort Mhuire is a protected structure

5.0 Planning Authority Decision

5.1. Planning Authority Reports

- A Vacant Sites report was prepared for the site outlining the dates of the visits to the site, the area, zoning and the type of site for the purposes of the Act which in this case is Residential. It is stated that the north-western corner of the site consists of a disused and locked car park with the remainder of the site lying vacant as green fields. It states that the site is not in residential use and is not being used for the purpose for which it was zoned. In relation to planning history, the permission for the car park is outlined and it is stated that the permission was activated although the car park is now locked and is currently not in use.
- In terms of need for housing (tests outlined in Section 6(4)) it is stated that in terms of (a) any site zoned for residential development implies that there is a need for housing in accordance with Section 5(1)(a)(i); (b) for 3-bed house average monthly rent is €2,687 (Sept 2017) and average purchase price is approx. €492,217 (2017); (c) approx. 4,927 households qualified for social housing support (October 2017); (d) 422 properties for sale (295) or rent (127) (Sept. 2016) which is 0.5% of the 88,500 housing stock with the assessment noting that having regard to the criteria that it is considered there is a need for housing in accordance with Section 6(4) of the Act.
- In terms of suitability for housing (tests outlined in Section 6(5)) in terms of (a) as site is zoned for housing it is considered suitable for housing; (b) site is served by public infrastructure and facilities; and (c) there does not appear to be any strategic or significant physical condition or constraint impacting the site which might affect the provision of housing and in conclusion it is stated that the site does appear suitable for the provision of housing.
- In relation to the majority of the site being vacant or idle for the last 12 months, it is stated that the site was vacant on the date of both site inspections (09 August 2016 and 09 February 2018) and is considered to have been vacant and idle for in excess of 12 months with the car parking area locked and not in use on both occasions. Aerial photography dated 21 April 2015, 30 June 2014, 7

December 2013 and 7 June 2013 verifies that the site has been vacant with the site considered to be vacant or idle.

- Site does not have an active use and is currently vacant and idle and is also attracting an element of anti-social behaviour. Reference is made to the Circular (PL07/2016) which references an interim use of the site for agricultural use but that given purpose of the levy that the site is not being used for the purposes for which it was zoned. It concludes that the site is a vacant site as it is situated in an area where there is a need for housing, the site is suitable for the provision of housing and the site or the majority of the site is vacant or idle.

5.2. Planning Authority Notice

Planning Authority decided under section 7(3) to issue a notice on 14th February 2018 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 Whitefriars, Carmelite Provincial Office.

6.0 The Appeal

6.1. Grounds of Appeal

An appeal was received on behalf of the Irish Province of the Order of Carmelites which is summarised as follows:

- Site forms part of the overall Irish Province of the Order Of Carmelites retirement community facility and is not vacant or idle as it has an important amenity value for the residents;
- Appellants located at Gort Mhuire since 1944 with 19 permanent residents and staff in addition to which 48 bedrooms continue to be used by members of the Order in Ireland and abroad with the community extending to 40 at certain times of the year;
- Offices of the Carmelite Institute of Britain and Ireland are situated at Gort Mhuire providing distance learning programme with substantial library on site, Church on site with regular mass services and site serves as administrative HQ for the order;

- Attendant grounds provide a peaceful environment highly appropriate for the needs of all residents;
- Car park, included in subject site, used to full capacity for resident and staff parking on a daily basis and for mass services on Sunday, meetings etc with 35 full and part time staff at the facility whom rely on car parking and should not be included in the VSR with the car park adjoining a protected structure (RPS No. 1453);
- Rationale for inclusion of an active and regularly use car park, permission granted under D07A/1537) unfounded and unduly harsh and request ABP acknowledge merit of car park and remove lands from entry;
- Provisions of the County Plan specifically the objective to provide and/or provide for institutional use in open land has inhibited the advancement of development on these institutional lands;
- Residential institution is a permissible use under the zoning with a special INST objective on the lands with the County Plan at Section 8.2.3.4 facilitating alternative uses subject to the areas zoning objectives and the open character of the lands being retained and acknowledges that the essential setting of the lands and integrity of main buildings are retained with a number of protected structures on site (No. 1453 & 1446);
- 'INST' lands require minimum open space provision of 25% which appears to have been overlooked by the PA with the appellant seeking to maintain the open character of the lands;
- Lands to north occupied by St Tiernan's Community School and formerly owned by appellant require space for possible future school expansion/redevelopment with Gort Mhuire centre still in active use as a location for global learning and appellant seeks to maintain this area for expansion of studies on these institutional lands;
- Original landholding of the appellant extended to 25 hectares at this location and now reduced to 5.4 hectares demonstrating that the residential development potential of the original holding has been exhausted with land now retained being most important for the longevity and amenity of the appellants;

- Some 78% of the original lands have been disposed of to enable high density residential development, a school, traveller accommodation, road re-alignment in the immediate area (figure 11 outlines) with residential density average of 95 dwellings p/h which cannot be stated as conforming to broader objective of protecting for institutional use in open land with area of appeal site required to be retained as open land for amenity purposes and request the Board acknowledge the amenity value associated with the area of open land;
- Advancement of development on the site severely constrained due to deficiency in adequate access provision with no direct access to the public road other than via the former avenue to Gort Mhuire from Wyckham Way to the west with no public road access along the other boundaries given the existing development;
- Considering nature of the use of Gort Mhuire together with presence of protected structures direct access for residential development through the existing internal driveway could not be considered achievable or equitable;
- Deficiency in local road network emerged with proposal for a new Educate Together school on St Tiernan's Community School Campus with plans for the school reliant on delivery of a new road through Wyckham Place which is in turn reliant on a tripartite agreement which includes appellant and while such an access could potentially provide access the execution of such an agreement outside appellants control and without such an agreement release of lands for development not conceivable;

6.2. Planning Authority Response

A response received from the Planning Authority to the grounds of appeal are summarised as follows:

- PA acknowledges existing and ongoing operation of Gort Mhuire on adjacent grounds, residential land a finite resource and shared interest in ensuring most efficient use and the site is not being used in the most efficient and effective manner;
- Draw ABP attention to the Vacant site report and report on submission received which informed decision to enter land;

- Site inspections undertaken by PA found no evidence that site in question was or is being utilised for amenity purposes with site overgrown and separated from the institutional grounds by a fence running along its western boundary making a clear distinction between the adjacent lands with minimal integration;
- Formal gardens actively managed and PA recognises importance of the Institutions grounds with the formal maintained gardens providing appropriate amenity spaces rather than the 3.49 ha greenfield adjacent;
- PA consider that car park is not in full and active use and as such site complies with criteria with car park locked on one visit with reference made to Appendix 3 of Circular Letter PL07/2016 where temporary short term, periodic ad hoc uses are stated as not being in full and active use;
- Car park area comprises a minority of the overall site with remainder undeveloped falling within the meaning of a vacant site on the basis that the majority of the site is greenfield;
- Acknowledged that any forthcoming application for a residential scheme on the lands would be required to consider in full the requirements of the County Plan but the INST objective does not preclude or prohibit the principle of residential development with reference to Policy RES5 of the CDP which requires minimum of 25% open space;
- Section 6(5) outlines the criteria for suitability with the core strategy and zonings providing that the site is zoned for residential development and therefore suitable for housing;
- Site is served by public infrastructure and facilities and there does not appear to be any strategic or significant physical condition or constraint impacting the site;
- In terms of the landholding having exhausted itself of development potential reference is made to the Circular Letter PL07/2016 where getting most efficient and effective use of land is outlined as is the facilitation of local authorities in achieving compact settlements with associated green spaces with the site not being used in the most efficient and effective manner;
- Site is close to Dundrum Town Centre, Luas, bus priority route and has benefit of existing physical and community infrastructure;

- Land previously disposed of by the landowner on a commercial basis is not a relevant consideration in the determination of whether the subject site is vacant or not but provides a blueprint for the future residential use of the site;
- PA is of opinion that suitable design solutions in relation to access could be achieved and that ultimately site is suitable for provision of housing.

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 outline 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.

Section 5(1)(a) of the Act states that 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 the provision of housing, and

(iii) 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.*”.

- 7.1.2. 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. The appeal and my assessment below will address points (ii) and (iii) that being the suitability of the site for the

provision of housing and the site being vacant or idle/purpose of the land. I would however note that in order to comply with Section 5(1)(a) that a site must meet all of the three sections.

7.2. Suitability for housing

7.2.1. While the appellants do not state in their appeal that the site is not suitable for the provision of housing they raise a number of issues regarding the physical condition of the lands. The tests to determine suitability for the provision of housing are set out in Section 6(5) of the Act as follows:

7.2.2. 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.

7.2.3. The appellants do not address the core strategy nor do they reference public infrastructure and facilities. They do reference what they consider to be insufficient access to the site which I consider would fall within this factor (b) and arguably also factor (c) which is whether there was anything affecting the physical condition of the land comprising the site which might affect the provision of housing. The appellants state that the advancement of development on the site would be severely constrained due to deficiency in adequate access provision with no direct access to the public road other than via the former avenue to Gort Mhuire from Wyckham Way to the west with no public road access along the other boundaries given the existing development. They state that considering the nature of the use of Gort Mhuire together with the presence of protected structures direct access for residential development through the existing internal driveway could not be considered achievable or equitable. They also note that a deficiency in the local road network emerged with the proposal for a new Educate Together school on St Tiernan's Community School Campus with plans for the school reliant on the delivery of a new

road through Wyckham Place which is in turn reliant on a tripartite agreement which includes the appellant and while such an access could potentially provide access the execution of such an agreement is outside the appellants control and without such an agreement the release of lands for development is not conceivable.

- 7.2.4. The PA is of the opinion that suitable design solutions in relation to access could be achieved and that ultimately the site is suitable for provision of housing. Whether it is reasonable to include the site on the Register prior to the resolution of such matters is not addressed. Currently I would suggest that it is not eminently obvious how the site could be appropriately accessed for a significant land area. As I outline below, the car park has a valid permission and while its location may provide a suitable access it currently has a permitted use. I would suggest to the Board that the matter of access is a central consideration in this matter and in the absence of a reasonable and available solution at this time that I consider that the site would not meet the tests for suitability for housing by reason of public services and infrastructure and whether there was anything affecting the physical condition of the land comprising the site which might affect the provision of housing.

7.3. Vacant or Idle and Purpose of the Lands

- 7.3.1. In relation to the vacancy or otherwise of the site or part thereof, there are a number of considerations. Firstly, as outlined in Section 3.1 above, Section 5(1)(a)(iii) has been amended by Section 63 of the Planning and Development (Amendment) Act, 2018 which provides that it states that 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.*”.

It is clear from the documentation on file that the appellant has been located on these lands since 1944 and therefore the site would have been zoned for residential

purposes following their becoming owners of the site and before the commencement of Section 63 of the 2018 Act. In this regard the site does not meet the tests outlined in Section 5(1)(a)(iii)(II) and the Notice should be cancelled. The Board should note that this amendment to the Act came into effect after the appeal was lodged and that in this regard the Board may wish to consider giving the Planning Authority an opportunity to respond to this matter. Notwithstanding the foregoing, for the Boards information I will also address the other matters raised in the appeal as they relate to part 5(1)(a)(iii)(I).

- 7.3.2. Considerable reference is made to the car park area located within the site. The PA consider that the car park is not in full and active use and as such the site complies with the criteria for vacant/idle as the car park was locked on the site visits. In addition, reference is made to Appendix 3 of Circular Letter PL07/2016 where temporary short term, periodic ad hoc uses are stated as not being in full and active use. While I note same, this area is set out in cobblelock includes lighting and is well maintained. While I acknowledge that the barrier was up on my visit and therefore the car park was not accessible to cars, the car park has a permitted use under Ref. D07A/1537 which is acknowledged was activated and therefore how often it is used is not material in my opinion as it is maintained as a car park for the use of the appellants.
- 7.3.3. While the PA states that the car park area comprises a minority of the overall site with the remainder undeveloped falling within the meaning of a vacant site on the basis that the majority of the site is greenfield, the area of the car park has a permitted use, is set out as a car park, is maintained as such unlike the remainder of the site which comprises a greenfield. Therefore, if the Board are minded to confirm the Notice, I do not consider that the car park area should be included within the site for the purposes of the levy. The role of the Board does not provide any ability to amend site boundaries and therefore I do not consider that there is any provision available to the Board to amend the map to which the Notice relates in order to remove the car park area from the site. Therefore I consider on this basis that the Notice subject of this appeal should be cancelled.
- 7.3.4. The appellants also address the amenity value of the lands and state that the site comprises the attendant grounds of the house providing a peaceful environment highly appropriate for the needs of all residents. I would tend to agree with the PA

that suggesting this field is part of the amenity of the site is somewhat dubious given the treatment of the landscaped areas existing within the site and the nature of this greenfield. I also note the reference to the INST objective included in the Development Plan which the appellants considers has been overlooked by the PA with the appellant stating that they are seeking to maintain the open character of the lands. While I acknowledge this objective, the INST objective would not prevent the development of the land for residential purposes but would establish a context within which it would be considered.

7.3.5. One of the arguments put forward by the appellants is that the lands to north of the site are occupied by St Tiernan's Community School having been formerly owned by appellant and that they may require space for possible future school expansion/redevelopment. It is also stated that the Gort Mhuire centre is still in active use as a location for global learning and the appellant seeks to maintain this area for expansion of studies on these institutional lands. I do not consider that these are reasonable arguments having regard to the spirit of the legislation which seeks to develop sites zoned for residential development for the use intended.

7.3.6. Finally, another argument put forward by the appellants is that the lands are exhausted of development potential having regard to the fact that the original landholding of the appellant extended to 25 hectares at this location and is now reduced to 5.4 hectares demonstrating that the residential development potential of the original holding has been exhausted with the land now retained being most important for the longevity and amenity of the appellants. They further elaborate this argument on the basis that some 78% of the original lands have been disposed of to enable high density residential development, a school, traveller accommodation and road re-alignment in the immediate area (figure 11 outlines) with a residential density average of 95 dwellings p/h which they state cannot be stated as conforming to the broader objective of protecting the institutional use in open land with area of appeal site required to be retained as open land for amenity purposes and they request that the Board acknowledge the amenity value associated with the area of open land. While I address the INST objective above, the land is zoned residential and its inclusion within a historically larger landholding is not of particular relevance given that the context of the area has changed dramatically and the predominant use within the area is now residential rather than institutional.

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 entry on the register of site (VS-0008) western section of Gort Mhuire and adjoining lands to the south and southeast of Gort Mhuire, Wyckham Place, Wyckham Point, Dundrum, Dublin 16 was vacant or idle for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 14th February 2018 shall be removed.

9.0 Reasons and Considerations

9.1. Having regard to

(a) the information submitted to 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 outlined in relation to the unsuitability of the site for the provision of housing by reason of access,

(e) that while the site is 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, the most recent purchase of the site occurred prior to its becoming residential land, and before, on or after the commencement of section 63 of the Planning and Development (Amendment) Act 2018, and

(f) the inclusion of a permitted car park area within the boundary of the vacant site, 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.

Una Crosse
Senior Planning Inspector
August 2018