



An
Bord
Pleanála

Inspector's Report ABP-303417-19

Type of Appeal	Section 9 Appeal against Section 7(3) Notice
Location	Site located to the north of the Applegreen Petrol Station, Ballinteer Avenue, Dublin 16
Planning Authority	Dun Laoghaire Rathdown County Council
Planning Authority VSL Reg. Ref.	VS-0061
Site Owner	St Michaels House Group Ltd
Planning Authority Decision	Place on Register
Date of Site Visit	1 st August 2019
Inspector	Sarah Moran

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 site located to the north of the Applegreen Petrol Station on Ballinteer Avenue, Dublin 18 onto the Vacant Sites Register (VSR) in accordance with the provisions of Section 6(2) of the Urban Regeneration and Housing Act 2015. The notice states that the Planning Authority is of the opinion that the site is a vacant site within the meaning set out in Sections 5(1)(a) and 5(2) of the 2015 Act.
- 1.2. The appeal site registered under VSL reference VS - 0061, has one stated registered owner, St. Michaels House Group Ltd.

2.0 Site Location and Description

- 2.1 The subject site has an area of c. 0.55 ha and is located at the western end of Ballinteer Avenue, within the functional area of Dun Laoghaire Rathdown County Council. It comprises lands to the rear of the Applegreen service station on Ballinteer Avenue. It is bound by the grounds of Our Lady's N.S. to the east, by residential properties within Broadford Rise to the north and by a public open space associated with Heather Park to the west. Access is via a laneway from Ballinteer Avenue to the immediate east of the Applegreen service station. The site is undeveloped and overgrown with mature trees and other vegetation. The no. 16 bus route is in close proximity.

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 2015 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)(a) and 5(2) of the 2015 Act. The Notice is dated 12th December 2018 and is accompanied by a map outlining the extent of the site to which the Notice relates.

3.1.2. Section 5(1)(a) of the 2015 Act states that a site is a vacant site if, in the case of a site consisting of residential land:-

- (i) the site is situated in an area in which there is a need for housing,
- (ii) the site is suitable for housing, and
- (iii) the site, or the majority of the site, is vacant or idle.

Section 63 of the Planning and Development (Amendment) Act 2018 amends section 5(1)(a)(iii) of the Act of 2015 by substituting it for the following:

“the site, or the majority of the site is—

(I) vacant or idle, or

(II) being used for a purpose that does not consist solely or primarily of the provision of housing or the development of the site for the purpose of such provision, provided that the most recent purchase of the site occurred—

(a) after it became residential land, and

(b) before, on or after the commencement of Section 63 of the Planning and Development (Amendment) Act 2018”.

3.1.3. Section 6 of the 2015 Act provides for the establishment and maintenance of a Register of Vacant Sites. Section 6(2) provides:

“A planning authority shall enter on the register a description, including a map, of any site in its functional area which was, in the opinion of the planning authority, a vacant site for the duration of the 12 months preceding the date of entry.”

Section 6(4) provides that a planning authority, or the Board on appeal, shall determine whether or not there was a need for housing in an area within the planning authority’s functional area for the purposes of this Part by reference to—

(a) the housing strategy and the core strategy of the planning authority,

(b) house prices and the cost of renting houses in the area,

(c) the number of households qualified for social housing support in accordance with section 20 of the Housing (Miscellaneous Provisions) Act 2009 that have specified the area as an area of choice for the receipt of such support and any changes to that number since the adoption of the planning authority’s development plan, and

(d) whether the number of habitable houses available for purchase or rent was less than 5 per cent of the total number of houses in the area.

Section 6(5) provides that a planning authority, or the Board on appeal, shall determine whether or not a site was suitable for the provision of housing for the purposes of this Part by reference to—

(a) the core strategy,

(b) whether the site was served by the public infrastructure and facilities (within the meaning of section 48 of the Act of 2000) necessary to enable housing to be provided and serviced, and

(c) whether there was any thing affecting the physical condition of the land comprising the site which might affect the provision of housing.

3.1.4. Section 9 relates to appeals against entry on the Register of Vacant Sites. Section 9(2) provides:

“On an appeal under this section the burden of showing that the site, or a majority of the site, was not vacant or idle for the duration of the 12 months concerned is on the owner of the site.”

3.1.5. Circular PL 7/2016 ‘RE: Implementation of the Vacant Site Levy as provided for in the Urban Regeneration and Housing Act 2015’ by the Dept. of Environment, Community and Local Government provides guidance on the above.

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**

4.1 There is no recent planning history pertaining to the subject lands.

5.0 Planning Authority Decision

5.1. Planning Authority Reports

5.1.1 A Vacant Site Report was prepared for the site outlining the dates of the visits to the site, description of the area, zoning, planning history and the type of site for the purposes of the Act which in this case is Residential. It is stated that the subject site is not in residential use and is not being used for the purpose for which it was zoned.

5.1.2 In terms of need for housing (tests outlined in Section 6(4)) it is stated that in terms of:

(a) Having regard to the Core Strategy and Housing Strategy set out in the County Development Plan, 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 residential unit, average monthly rent is €2,612 (October 2018) and average purchase price is approx. €567,110 (October 2018).

(c) Approximately 4,484 households qualified for social housing support (September 2018).

(d) 1,225 properties for sale and 383 properties to rent (October 2018) which is 1.85% of the 86,962 housing stock

with the assessment noting that having regard to the criteria and to the continual increase in demand for housing, that it is considered there is a need for housing in accordance with Section 6(4) of the Act.

5.1.3 In terms of suitability for housing (tests outlined in Section 6(5)):

(a) As site is zoned for housing it is considered suitable for housing.

(b) The site is served by public infrastructure and facilities necessary to enable housing to be provided and serviced.

(c) There does not appear to be any strategic or 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.

5.1.4 In relation to the majority of the site being vacant or idle for the last 12 months, it is stated that a site inspection on 29th August 2018 found the site to be vacant, photos

are submitted. Aerial photography dated 24th June 2018, 7th May 2017 and 2nd June 2016 verifies that the site has been vacant and idle for a period in excess of 12 months.

5.1.5 The report concludes that the site does not have an active use and is currently vacant and idle. Under the provisions of Section 5 of the Urban Regeneration and Housing Act 2015 (as amended), it is considered that this site consists of 'residential land' and is a 'vacant site'.

5.2 Planning Authority Notice

5.2.1 The planning authority decided under Section 7(3) to issue a Notice on 12th December 2018 referencing Sections 5(1)(a) and 5(2) of the Act and stating that the site has been entered onto the Vacant Sites Register. The notice was issued to St. Michaels House Group Ltd.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1 The appeal received from St. Michael's House on 11th January 2019 may be summarised as follows:

- The site is owned by St. Michael's House, a voluntary organisation with charitable status providing services to people with intellectual disabilities.
- The site has been designated for a new special education facility. The site owner is awaiting confirmation from the Department of Education and Skills in order to proceed with the project.
- The site owner is therefore not in a position to use the site until the final decision is made by the Department.

6.2. Planning Authority Response

6.2.1 The response of Dun Laoghaire Rathdown County Council may be summarised as follows:

- The provisions of the 2015 Act relate to the assessment of a site separate to any ownership status. While the charitable status of the landowner is acknowledged, the ownership is not a relevant factor in determining whether or not a site is vacant.
- Refers to the Appendix 3 of Circular PL 7/2016 with regard to the provision of schools and their interrelationship with the VSL.
- The site is not in the ownership of the local authority and the current County Development Plan does not specifically identify the site for the provision of a school or educational facility. It therefore is not considered to meet the criteria set out in Circular PL 7/2016 to be exempt from the levy on the basis of its intended provision as an education facility.
- It is unclear who has designated the site as an educational facility and there is no evidence of dialogue between the appellant and the Dept. of Education in support of the case, ref. section 9(2) of the 2015 Act, which states that the onus is on the site owner to show that the site was not a vacant site for the duration of the 12 months concerned.
- The current land owner has owned the site for a considerable period of time. Land Registry records indicate that the majority of the site was registered to St. Michael's House in 2004 and yet no planning activity has taken place in the intervening c. 15 years and the site remains vacant and idle. The site was zoned for residential development when it was acquired by the current owner. Zoning maps from the 1998 and 2004 County Development Plans are submitted in support of this statement. The site is therefore considered to satisfy the criteria under section 5(1)(a)(iii)(II) in that the land is not being used for the provision of housing or being developed for the purpose of such provision and the most recent purchase of the site occurred subsequent to the lands being zoned for residential purposes.

6.3 Appellant Response to Planning Authority Submission

6.3.1 In the particular circumstances of the Planning Authority response to this appeal the Board sought a response from the appellant. No response was received.

7.0 Assessment

7.1. The following matters are to be considered in this Appeal against Notice of Entry on Vacant Sites Register, with regard to the relevant legislation as set out above:

- Issue of Site Ownership
- Is the site situated in an area in which there is a need for housing?
- Is the site suitable for housing?
- Is the site, or the majority of the site, vacant or idle?

These matters may be considered separately as follows.

7.2. Site Ownership

7.2.1. The appellants submit that they are a voluntary organisation with charitable status providing services to people with a disability. I note that the 2015 Act does not include any exemptions for landowners of charitable status or otherwise. I also note that Circular PL 7/2016 states the following in relation to the identification of vacant sites:

“... the scope of the levy provisions applies to vacant sites in “regeneration land” or “residential land” (see definitions in Appendix 1) in designated areas irrespective of the ownership status of the sites, i.e. be they in public or private ownership.”

I therefore conclude that the charitable status of the site owner does not exempt the site from entry on the Register of Vacant Sites.

7.3. Is the site situated in an area in which there is a need for housing?

7.3.1. The appeal does not contest the issue of whether there is a need for housing in the area. I note the information and data concerning section 6(4) as submitted by the planning authority that demonstrates that there is a housing need in the area.

7.4. Is the site suitable for housing?

7.4.1. This matter is not contested in the appeal. Neither the 2015 Act nor Circular PL 7/2016 refer to how the suitability of the site for housing is to be determined. The subject site is zoned for residential development under the County Development Plan. It is located in an established urban area in close proximity to good public transport connections. I consider that the is entirely consistent with the provisions of the development plan core strategy. It is considered to be suitable for housing on this basis.

7.5. Is the site, or the majority of the site, vacant or idle?

7.5.1. With regard to the requirements of section 5(1)(a)(iii)(I), to my site inspection and to the planning authority report and other documentation on file, I note that the site is currently not used for the provision of housing. The documentation on file states that Land Registry records indicate that the majority of the site was registered to St. Michael's House in 2004 and that there is no planning history relating to the site since then. The planning authority has submitted zoning maps from the 1998 and 2004 County Development Plans, which indicate that the site was zoned for residential development during this period. The site was zoned for residential development when it was acquired by the current owner. The site is therefore considered to satisfy the criteria under section 5(1)(a)(iii)(II) in that the land is not being used for the provision of housing or being developed for the purpose of such provision and the most recent purchase of the site occurred subsequent to the lands being zoned for residential purposes.

7.5.2. I note the following in Appendix 3 of Circular PL 7/2016 with regard to the potential use of the site for an educational facility, as referenced by the planning authority in their response to the appeal:

“It should be noted that local authority owned sites which have been identified for the provision of education facilities by both the Department of Education and Skills and the local authority, or identified by the local authority as reservations for capital works (such as for the provision of roads) should not be subject to the levy. In such cases, the provision of reservations for capital works in a local authority functional area must be reflected in the development plan objectives.”

However, the site owner has not submitted any evidence that the subject site has been identified by either the Dept. of Education and Skills or the local authority for the provision of educational facilities. In addition, the site is not identified in the current County Development Plan for the provision of a school or educational facility. I therefore consider that the exemption outlined above does not apply in this case.

- 7.5.3. The site must have been vacant for the duration of the 12 months preceding the date of entry on the Vacant Sites Register as per section 6(2) of the 2105 Act. The planning authority entered the site on the Register in January 2018, based on its site inspection on 29th August 2018 and on aerial photography (Google Earth) dated 24th June 2018, 7th May 2017 and 2nd June 2016. Appendix 3 of Circular PL 7/2016 states:

“Local authorities are advised that they should maintain appropriate records, including photographic evidence, as necessary, to support their finding that a site was vacant for the necessary period.”

In this instance, it is noted that the planning authority has not provided photographic evidence that the site was visited at the beginning of the 12 month period, i.e. August 2017. The provision of third party online data is not considered as a suitable form of evidence to determine the use of the site. The planning authority therefore has not provided satisfactory evidence that the site was vacant for the 12 months predating its entry on the Register.

8.0 Conclusion

- 8.1. I am satisfied that there is a need for housing in the area of the subject site as per section 6(4) of the 2015 Act and that the site is suitable for the provision of houses as per section 6(5). Having regard to my site inspection and to the photographic evidence on file, I am satisfied that the site is currently vacant / idle and was vacant / idle when the planning authority carried out its site inspection on 29th August 2018. However, the planning authority has not submitted satisfactory photographic evidence that the site was vacant in the 12 month period preceding the date of the site's entry on the Register in December 2018. The site should therefore be removed from the Register. This does not preclude the planning authority from recommencing

the process and implementing the 2015 Act in terms of allowing the requisite 12 month time period to elapse.

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 cancel the Notice stating that the site located to the north of the Applegreen Petrol Station, Ballinteer Avenue, Dublin 16 was a vacant site for the 12 months concerned. There, the entry on the Vacant Sites Register on the 7th December 2018 shall be removed.

10.0 Reasons and Considerations

- 9.1 Having regard to

(a) The information placed before the Board by the Planning Authority in relation to the entry of the site on the Vacant Sites Register,

(b) The grounds of appeal submitted by the appellant,

(c) The report of the Planning Inspector, and

(d) The site could not have been a vacant site within the meaning of section 5(1)(a) of the Urban Regeneration and Housing Act, 2015, as amended, for the reason that the assessment of the site did not account for the duration of the 12 months preceding the date of entry on the register in accordance with section 6(2) of the 2015 Act, and the Board is not satisfied from the evidence on the file, that the site was a vacant site for the relevant period, the Board considered it appropriate that a notice be issued to the planning authority to cancel the entry on the Vacant Sites Register.

Sarah Moran

Senior Planning Inspector

11th September 2019