



An
Bord
Pleanála

Inspector's Report ABP-303529-19

Type of Appeal	Section 9 Appeal against Section 7(3) Notice
Location	Site located to the east of the Carmelite Monastery, Kilmacud Road Upper, Blackrock, Co. Dublin
Planning Authority	Dun Laoghaire Rathdown County Council
Planning Authority VSL Reg. Ref.	VS-0078
Site Owner	Discalced Carmelite Nuns of the Carmelite Monastery of St. Joseph
Planning Authority Decision	Place on Register
Date of Site Visit	8 th October 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 to the East of the Carmelite Monastery, Kilmacud Road Upper, Stillorgan, Co. Dublin onto the Vacant Sites Register 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 - 0078, has one stated registered owner, the Discalced Carmelite Nuns of the Carmelite Monastery of St. Joseph.

2.0 Site Location and Description

- 2.1 The subject site (c. 1.64 ha) is located in the grounds of the Carmelite Monastery of St. Joseph, within 500m of Stillorgan village and close to several bus routes on Kilmacud Road Upper. The monastery complex including the main residential building, altar bread making facilities and a chapel, along with associated parking area, gardens and outbuildings, faces Kilmacud Road Upper and the subject site is located to the east (rear) of the monastery buildings. It is bound to the north and west by residential properties within Convent Court, Woodthorpe and Westbury. There are residential properties and an area of public open space to the immediate south of the site, beyond which lie the grounds of St. Raphael's secondary school. The monastery complex is accessed from Kilmacud Road Upper and the site has a separate access from Woodthorpe estate. The site comprises a field / meadow and is surrounded by a pedestrian route. There are mature trees at the site boundaries.

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)(a) and 5(2) of the Act. The Notice is dated 20th 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 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 5(2) of the Act defines a ‘site’ as:

“... 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”

And ‘home’ as follows:

“‘home’, in relation to a person, means a dwelling in which the person ordinarily resides (notwithstanding any periods during which the dwelling is vacant) and includes any garden or portion of ground attached to and usually occupied with the dwelling or otherwise required for the amenity or convenience of the dwelling.”

3.1.4. Section 6 of the 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 anything affecting the physical condition of the land comprising the site which might affect the provision of housing.

3.1.5. 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.”

3.1.6. 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 relating to the subject site.

4.1 **Planning Authority Decision**

4.2. **Planning Authority Reports**

4.2.1. 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. The site is zoned for residential development and the site is considered with regard to the provisions of section 5(1)(a), i.e. residential land.

4.2.2. 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 12th November 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'.

5.1.6 The current site owner, the Discalced Carmelite nuns of the Carmelite Monastery of St. Joseph, made a submission to the planning authority in December 2018, which included the following main points:

- The Planning and Development (amendment) Act 2018 states that a site shall not be deemed vacant provided that the most recent purchase of the site occurred before it became residential land.
- The residential land zoning allows for a residential institution.
- The original landholding of the Discalced Carmelite Nuns of the Carmelite Monastery of St. Joseph was c. 4.3 ha at this location in c. 1900, reduced now to c. 3.1 ha, a fact which demonstrates that the residential development potential of the original landholding has been exhausted, with the land now retained being the most important for the longevity and amenity of the Order of Carmelites.

- The subject site, which is part of St. Joseph's Carmelite Convent, is not idle or vacant, having an important amenity value for residents.
- These matters are elaborated with similar points to those made in the grounds of appeal as summarised below.

5.1.7 The planning authority report on the above submission notes the following main points:

- The site is not zoned as institutional land. There is no 'INST' objective attached to the site, nor is there and 'INST' objective applied to the Carmelite convent to the west. Planning considerations pertaining to lands with the 'INST' objective are not relevant in this instance.
- It is considered that the specific characteristics of the site, including the proximity of a protected structure to the west, do not fundamentally undermine the principle of developing the site for residential purposes.
- The site is zoned for residential use and is, in effect, a large greenfield site in a suburban setting in close proximity to Stillorgan village, which has the benefit of existing physical and community infrastructure within its immediate environs. The planning authority considers that the subject site is not being used in the most efficient and effective manner possible nor is it being put to the most productive and appropriate use in the interests of the common good.
- The planning authority considers that land previously disposed of by the landowner is not a relevant consideration as to the determination of where the subject site is a vacant site in accordance with the provisions of the 2015 Act.
- The site inspection carried out by the planning authority found minimal evidence that the site was or is being used for amenity purposes. The site is a large greenfield site with independent access through Woodthorpe estate, which is separated from the Carmelite convent and its attendant gardens by field boundaries to the west.
- While the location of the Carmelite convent adjacent to the greenfield site may provide an environment conducive of tranquil reflection, passive thought and allow for silence and solitude, it is not considered reasonable that a greenfield

site zoned for residential development and located in a built up suburban location should remain vacant on this basis.

5.1.8 Under the provisions of Section 5 of the Urban Regeneration and Housing Act 2015 (as amended), the planning authority considered that the site is vacant / idle as per section 5(1)(a)(iii) (as amended), consists of 'residential land' and meets the criteria for sections 5(1)(a)(ii) and (iii) with regard to the tests set out in sections 6(4) and 6(5) and therefore is a 'vacant site' as per section 5(1)(a) of the 2015 Act.

5.2 Planning Authority Notice

5.2.1 The planning authority decided under Section 7(3) to issue a Notice on 20th December 2018 referencing Sections 5(1)(a), 5(2) and Section 6(2) of the Act and stating that the site has been entered onto the Vacant Sites Register. The notice was issued to the Trustees (Carmelite Sisters) of the Carmelite Monastery of St. Joseph, Kilmacud Road Upper, Stillorgan, Blackrock, Co. Dublin.

5.0 The Appeal

5.1. Grounds of Appeal

5.1.1. The appeal received from the Discalced Carmelite nuns of the Carmelite Monastery of St. Joseph may be summarised as follows.

5.1.2. Site Ownership

- Section 63 of the 2018 Act states that a site shall not be deemed vacant or idle if 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.
- The subject site has been owned by the Discalced Carmelite nuns of the Carmelite Monastery of St. Joseph since 17th May 1892. A historic map is submitted in support of this statement, also correspondence from the appellant's solicitor outlining that the site is in the ownership of Trustees of the Carmelite Sisters of St. Joseph's Monastery.

- The original landholding of the Carmelite monastery was c. 4.3 ha at this location in c. 1900, now reduced to c. 3.1 ha. The original development potential of the landholding has been exhausted with the land now retained being the most important for the longevity and amenity of the Carmelite Monastery of St. Joseph's.

5.1.3. Use of Site

- The lands are within the Carmelite monastery and are used as part of the overall Carmelite community facility. The lands are not idle or vacant as they have an important amenity value for residents of the monastery. They are in active use as both a residence and as a place of worship.
- The subject site is rich in biodiversity and plant and animal species at the site are regularly monitored with records submitted to the National Biodiversity Data Centre. There is a development plan objective to protect trees at the site.
- The Carmelite community has a mission of contemplative prayer. This reflective prayer is done on the grounds of the Carmelite monastery. The existing chapel on the grounds is also a place of worship for the general public. The subject site provides an environment that is highly appropriate for the needs of the Carmelite community, their congregation and the general community with areas of tranquil reflection and prayer.
- If the appeal site becomes development lands, the area of the Monastery landholding would be reduced to c. 1.5 ha.

5.1.4. Zoning

- The subject site is zoned for residential development under the current County Development Plan with the remainder of the monastery lands to the east being zoned 'To protect and / or provide for Institutional Use in open lands'.
- The use of the site as a place of public worship is an 'open for consideration' use under the residential zoning objective.
- There is a protected structure close to the appeal site. It is submitted that any development at the subject site would adversely affect the protected structure.

5.1.5. ABP Precedent

- ABP-301059-18 relates to lands adjacent to Leopardstown Racecourse, Dublin 18, which were purchased prior to the land being zoned as residential land and prior to the commencement of section 63 of the 2018 Act. The entry onto the Vacant Sites Register was cancelled by the Board in this instance having regard to several items including section 63 of the 2018 Act.
- PL06D.301166 relates to lands at Gort Mhuire, Ballinteer, Dublin 16. The site had been zoned for residential purposes after it was acquired by the owners and before the commencement of section 63 of the 2018 Act. The Board determined that the site was not a vacant site within the meaning of the 2015 Act.

5.2. **Planning Authority Response**

6.2.1 The response of Dun Laoghaire Rathdown County Council refers the Board to the Vacant Site Report and Report on Submission Received on file, as summarised in section 5.1 above. The planning authority has considered the appeal and is of the opinion that no new matters of significance have been raised that merit further comment. The attention of the Board is drawn in particular to the planning authority response to the section 7(1) submission by the landowner, as summarised in section 4.2.2 above.

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. A response was received on 20th March 2019. The main points made may be summarised as follows:

- The submission refers to ABP-301166-18 in relation to lands at Gort Mhuire, Ballinteer, Dublin 16, as discussed in the appeal. In that case the Board determined that the lands did not meet the tests outlined in section 5(1)(a)(iii)(II) and the Board overturned the decision of the local authority to enter the site onto the Vacant Sites Register.
- The submission notes a decision by Galway County Council in relation to lands at Kingston Road, Knocknacarra, Co. Galway (File Ref. 027 West). The site was

purchased in the 1800s and the planning authority cancelled the proposed entry onto the Vacant Sites Register with reference to section 63 of the 2018 Act.

- The submission reiterates that the subject site is an important amenity for the residential community. The site contains a circular path that is used by the nuns for exercise and prayer. It is submitted that section 5(2) of the 2015 Act states that a 'site' does not include any structure that is a person's home. It is submitted that the subject site comes within the scope of the definition of a 'home' as provided in section 5(2) of the Act.

6.0 **Assessment**

6.1. The following matters are to be considered in this Appeal against Notice of Entry on Vacant Site Register, with regard to the relevant legislation as set out above, i.e. sections 5(1)(a) (as amended), 6(4) and 6(5) of the 2015 Act:

- Recent precedent ABP-303518-19
- Is the site is 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.

6.2. **Recent Precedent ABP-303518-19**

6.2.1. The Board recently considered a similar case relating to lands within the grounds of the Carmelite Monastery on Roebuck Road. In that case, the Board determined that the site was not a vacant site within the meaning of the Urban Regeneration and Housing Act, 2015 with regard to the purchase of the site prior to it becoming residential land and before the commencement of section 63 of the Planning and Development (Amendment) Act, 2018, also the absence of sufficient evidence to support the contention of the planning authority that the site was vacant and idle for the period of 12 months preceding the date of placing the site on the register.

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

6.3.1. 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.

6.4. **Is the site suitable for housing?**

6.5. 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 development of the site is entirely consistent with the provisions of the development plan core strategy. It is considered to be suitable for housing on this basis.

6.6. **Is the site, or the majority of the site, vacant or idle?**

6.6.1. Several relevant matters may be considered separately as follows.

6.6.2. Current Use of the Site

Whereas the planning authority considers that the site is a vacant field located in an urban area, the landowner submits that it is used as an amenity space for residents of the Carmelite Monastery on these lands and therefore comes within the definition of a 'home' as per section 5(2) of the 2015 Act and cannot be considered a vacant site.

The site is an overgrown field / meadow to the rear of the Monastery complex. It has been left untended to develop as a biodiversity area. There is a pedestrian path around the perimeter of the site that is regularly used by the Carmelite Sisters contemplative order for prayer and exercise. I am satisfied that the site is an integral part of the monastery complex. I note that the definition of a 'home' in section 5(2) states:

"... includes any garden or portion of ground attached to and usually occupied with the dwelling or otherwise required for the amenity or convenience of the dwelling."

I note the additional guidance provided in Appendix I of Circular PL 7/2016:

"In effect, a vacant site for the purposes of the levy cannot include a person's home and garden."

I consider that the site comes within the scope of this definition and therefore cannot be considered as a vacant site.

I note the information provided by the landowner in relation to the sale / disposal of lands that were originally located within the monastery landholding. It is evident that

the use of the overall landholding has changed over the years, probably in the context of other changes in the resident religious community. These matters are not considered to be directly relevant to the issue of whether the subject site is currently vacant / idle.

6.6.3. Site Ownership

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”.

I note the following advice in relation to section 63 as provided in Appendix 1 of circular letter PL 04/2018, issued by the Dept. of Housing, Planning and Local Government on foot of the 2018 Act:

“This provision differentiates between lands purchased following a zoning change to residential and lands held in ownership regardless of zoning, such as those long held and operated as farms. Therefore, its aim is to focus on developers or speculators who have purchased residentially zoned and serviced lands but are not bringing those lands forward for development for that purpose. However, it confirms that lands owned and in use prior to being rezoned to residential (i.e. for agricultural purposes), and which continue in such use shall not be regarded as “vacant or idle” for the purposes of the levy and are therefore not liable to the levy.”

I consider that section 5(1)(a)(iii)(II) does not apply in this instance. The site is not vacant or idle and is being used for a purpose that does not consist of solely or primarily of the provision of housing. The landowner states that the site has been owned by the Carmelite Sisters since 1892, i.e. prior to its zoning as residential land and before the commencement of section 63 of the 2018 Act. The site therefore

does not come within the definition of a vacant site as per section 5(1)(a) of the 2015 Act. The recent precedent of ABP-303518-19, as discussed above, is also noted in this regard.

6.6.4. Evidence of Vacancy Provided by the Planning Authority

The site must have been vacant for the duration of the 12 months preceding the date of entry on the Register as per section 6(2) of the 2105 Act. The planning authority entered the site on the Register in December 2018, based on its site inspection on 12th November 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 case, the planning authority has not provided photographic evidence that the site was visited at the beginning of the 12 month period. 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.

6.6.5. Conclusion

To conclude, it is considered that the site is not a Vacant Site for two reasons;

- It is currently in use as an integral part of the Carmelite monastery, which is a residential community, and therefore comes within the scope of the definition of a 'home' as per section 5(2) of the 2015 Act and therefore does not meet the definition of a 'site' as per section 5(2).
- It does not come within the scope of the definition of a vacant site as per section 5(1)(a)(iii) of the 2015 Act (as amended);

In addition, the planning authority has not provided satisfactory evidence that the site was vacant for 12 months predating its entry onto the Register of Vacant Sites.

7.0 Conclusion

7.1. 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). However, as per the above assessment, it is considered that the subject site does not meet the definition of a 'site' as per section 5(2) and does not come within the scope of section 5(1)(a)(iii) (as amended), i.e. it is not vacant or idle. In addition, 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.

8.0 Recommendation

8.1. 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 east of the Carmelite Monastery, Kilmacud Road Upper, Stillorgan, Co. Dublin, was a vacant site for the 12 months concerned. Therefore, the

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 site is used for amenity purposes associated with the resident Carmelite community. It therefore meets the definition of a 'home' as per section 5(2) of the Urban Regeneration and Housing Act 2015 (as amended) and does not meet the definition of a 'site', which does not include any structure that is a person's home.
- e)
- f) The site is used for amenity purposes associated with the resident Carmelite community. It therefore meets the definition of a 'home' as per section 5(2) of the

Urban Regeneration and Housing Act 2015 (as amended) and does not meet the definition of a 'site', which does not include any structure that is a person's home.

- g) The most recent purchase of the site which occurred prior to it becoming residential land, and before, on or after the commencement of section 63 of the Planning and Development (Amendment) Act, 2018,
- h) The recorded date of site inspection, (12th November 2018) provided by the Planning Authority in its submitted documentation, and
- i) The absence of sufficient evidence to support the contention of the planning authority that the site was vacant and idle for the period of 12 months preceding the date of placing the site on the register.

The Board considers that it is appropriate that a notice be issued to the Planning Authority who shall cancel the entry on the Vacant Sites Register.

Sarah Moran
Senior Planning Inspector
October 8th 2019