



An
Bord
Pleanála

Inspector's Report ABP-306418-20

Type of Appeal	Section 9 Appeal against Section 7(3) Notice
Location	Vacant Site at CE 20497, R6, Ballycasey More, Shannon Town, Co. Clare
Planning Authority	Clare County Council
Planning Authority VSL Reg. Ref.	VSR1 2019
Site Owner	Kathleen McMahon
Planning Authority Decision	Place on Register
Date of Site Visit	27th March 2020
Inspector	Erika Casey

1.0 Introduction

- 1.1. This appeal refers to a Section 7(3) Notice issued by Clare County Council, stating their intention to enter a site referred to as site at CE 20497, R6, Ballycasey More, Shannon Town, Co. Clare 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) of the URH Act 2015.
- 1.2. The appeal site registered under VSL reference VSR1 2019, has a one registered owner: Kathleen McMahon. The site has been in her ownership since September 2009.

2.0 Site Location and Description

- 2.1 The subject site with an area of 0.74 ha is located to the north east of Shannon Town Centre. It is bound to the north by the N18 National Road. To the south, is Dun Aras Avenue. The site is greenfield in character and characterised by overgrown vegetation. To the south, is low density suburban housing.

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) of the Act. The Notice is dated the 19th of December 2019 and is accompanied by a map outlining the extent of the site to which the Notice relates referred to as R6.
- 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.

3.1.3. It is noted that Section 5(1)(a)(iii) has been amended by Section 63 of the Planning and Development (Amendment) Act 2018 which commenced upon coming into effect of the Act (19 July 2018). 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”.

3.1.4 The Act defines ‘residential’ land in Section 3 as follows:

“residential land” means land included by a planning authority in its development plan or local area plan in accordance with section 10(2) of the Act of 2000 with the objective of zoning for use solely or primarily for residential purposes, and includes any structures on such land.”

3.2. Development Plan Policy

Shannon Town and Environs Local Area Plan

3.2.1 The site is zoned for residential development in the Shannon Town and Environs Local Area Plan 2012 to 2018 (extended until 2022).

3.2.2 The LAP describes the site as follows:

“A small area of residential land remains here, abutting the N18. Development of this area will be subject to a 30 metre buffer between the building line and the new N18, in the interests of residential amenity.”

4.0 Planning History

Planning Authority Reference P93-1063

- 4.1 Outline planning permission granted to construct two dwelling houses with septic tanks.

5.0 Planning Authority Decision

5.1 Planning Authority Reports

5.1.1 A Vacant Site Report (11.11. 2019) was prepared for the site outlining the dates of the visit 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. The following key points are noted:

- Site visits were undertaken on the 12.10.2018, 17.10.2019, and 04.11.2019.
- The site was found to be vacant and idle.
- The site is zoned R6 – Residential as per the Shannon Town and Environs LAP 2012-2018 which will remain in effect until a new LAP is made in 2023.
- The site is situated in an area in which there is a need for housing.
- The site is in excess of 0.05ha and does not include any structure that is a person's home.

5.1.4 A further Planning Report (12.12.2019) was prepared in relation to the lands. This noted:

- A further site inspection carried out in the 12.12.2019.
- It recommended that the lands should be included on the Vacant Sites Register and that a section 7(3) Notice be issued.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1 An appeal was received from Michael Glynn and Co., Solicitors on behalf of the landowner on the 17th of January 2020. The grounds of appeal can be summarised as follows:

- The site was not purchased but was inherited. It was registered on the 25th of September 2009. It is clear that the ownership of the property was in the landowners name before it was zoned for residential use.
- It was the intent to develop the site, however, the developer of the adjoining Dun Aras estate was seeking substantial contributions to connect into the water and sewerage services in his ownership. It was, therefore, not economically feasible to develop the site.
- The adjoining housing estate is now taken in charge and a pre planning enquiry (PP1-19-206) has been lodged to the Council. Correspondence from the Council confirms that a flood risk assessment and noise assessment report should be prepared for the site and also that there is a requirement to have a feasibility study done by Irish Water in relation to viability of sewer connection. This demonstrates that the landowner has taken appropriate steps to have the site developed and also demonstrates that there are a number of hurdles to be cleared to lodge a planning application.
- Notwithstanding the zoning of the site, planning permission has not been granted and it cannot be conclusively determined that the site is suitable for the provision of housing given the unknown outcome of the flood risk assessment, noise assessment, planning process and Irish Water confirmation. It is unfair and unjust to include the site on the VSR.

6.2. Planning Authority Response

- The land was inherited by the current owner in September 2009. The site was first zoned Residential in the South Clare LAP 2009 which was formally

adopted in the 9th of February 2009.

- The site is zoned for residential use and is deemed suitable for residential use. The site is suitable for the provision of housing for the purposes of the Act with reference to the core strategy, public infrastructure and physical condition.
- It is noted that a pre planning application for the development of the site was made by the land owner in 2019 and this demonstrates that the land owner is willing to develop the land for residential use.

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.

7.1.2. 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.

7.1.3. As I note above, Section 5(1)(a)(iii) has been amended by Section 63 of the Planning and Development (Amendment) Act 2018 which commenced upon coming into effect of the Act (19 July 2018). 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”.

7.1.4 Section 6 (4) determines whether or not there was a need for housing in an area within the Planning Authority’s function area by reference to:

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

(b) house prices and the cost of renting 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% of the total number of houses in the area.

7.1.5 Section 6(5) of the Act determines the suitability of a site for housing having regard 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 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.

7.1.9 My assessment will, therefore, address specifically section 5(1) (a) (i) (ii) and (iii) as to whether the site is situated in an area in which there is a need for housing, whether the site is suitable for housing and whether the site, or the majority of the site, is vacant or idle. Firstly however, I will address the procedural matter of the Local Area Plan.

7.2 Procedural

7.2.1 Section 28 of the Act amends section 10(2) of the Act to require a mandatory objective in development plans to support regeneration. Circular letter PL 7/ 2016 provides the following guidance:

“As part of the Urban Regeneration and Housing Act 2015, section 10(2)(h) of the Planning and Development Act 2000, as amended, has been further expanded – see

Appendix 1 for further elaboration. This section of the Planning Act requires a mandatory objective to be included in a development plan to support urban regeneration. In light of this revision, planning authorities are required to examine their current development plans with a view to ensuring that the revised requirements of section 10(2)(h) have been integrated into their development plans. In this regard and as part of this examination, planning authorities should in the first instance provide for the development of vacant sites in designated areas (“residential land” and/ or “regeneration land”) as an explicit objective in their development plans or local area plans, supporting their core strategies in their development plans. This is to give a clear foundation to the fair and equitable application of the levy in their respective functional areas.

The areas designated in a development plan or, where appropriate, a local area plan for the purposes of the levy can be indicated by –

(i) designating specific “residential land(s)” in areas zoned primarily as residential or specific “regeneration land(s)” in areas zoned primarily for regeneration as areas in which the levy can be applied on vacant sites in those areas, or

(ii) designating all lands in an area which are zoned for residential or regeneration uses as areas in which the levy can be applied on vacant sites.”

7.2.2 It is further stated that a Planning Authority may choose the most appropriate plan for identifying areas to which the vacant site levy will apply - County/City Plan or Local Area Plan. However, the County/City Plan must clearly articulate policy relating to the revised section 10(2)(h). In summary, the Planning Authority shall include objectives in its development plan for the development and renewal of identified areas in need of regeneration or residential development. It will be a matter for the elected members to identify and incorporate those areas in their development plan or local area plan. Only vacant sites and structures located in those areas, as incorporated in the development plan, can be placed on the vacant site register and be liable for the levy.

7.2.3 I have reviewed the statutory development plan for the area which is the Shannon and Environs Local Area Plan 2012-2018 (as extended to 2022). I have also reviewed the Clare County Development Plan 2017-2023. There is no reference to sites or zoning objectives to which the vacant site levy is applicable in the LAP. The

County Plan (section 16.2.8) does list a number of sites in the County to which the vacant site levy is applicable, however, the subject site is not specifically identified. I note however, that notwithstanding the guidance set out in the Circular, Section 3 of the Urban Regeneration and Housing Act 2015, defines 'residential' as follows:

“residential land” means land included by a planning authority in its development plan in accordance with section 10(2)(a) of the Act 2000 with the objective of zoning for such use or primarily for residential purpose, and includes any structures on such land.”

7.2.4 In this instance, the subject site is zoned 'Residential'. On balance, notwithstanding the absence of a site specific reference in the Local Area Plan or Development Plan, I am satisfied that as the lands are zoned 'Residential' in accordance with section 10(2)(a) of the Act that the vacant site levy can be applied to the subject lands.

7.3 The Need for Housing

7.3.1 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.

7.3.2 Section 6 (4) sets out the criteria to determine whether or not there was a need for housing in an area within the Planning Authority's function area.

7.3.3 I note that a detailed Housing Need Assessment for Shannon was carried out by the Planning Authority in 2019. This notes the following key points:

- The core strategy estimates that the population of Shannon in 2023 will be 12,931 people. This represents an increase of 1,185 households over the plan period.
- There will be a need for 1,250 new houses to be delivered in Shannon by 2023. There has been a marked decrease in the number of units being built in Shannon since 2016.
- As of Quarter 2 2019, the average monthly rent in Co. Clare is €858.00 (+11.2% in Q2 of 2019 from the Q2, 2018 figure). The average house price in Co. Clare in Q2 of 2019 was €192,825 which represents an increase of 3.2% from the Q2 of 2018 average price for County Clare.

- The total households seeking social housing support in Shannon is 399.
- According to Daft.ie, there are currently 45 residential properties for sale in Shannon with just 5 residential properties available to rent. The 2016 CSO indicates that Shannon has a population of 9,729 persons which consisted of 3,678 households. 5% of the CSO figure from 2016 would be 184 units. Based on the Daft.ie data, it is clear that the total number of residential properties that are available for either sale or rent at 180 units is significantly less than the 5% figure of 184 units.
- The report concludes 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.

7.3.4 I would concur with the assessment set out by the Planning Authority that there is a demonstrable need for housing in Shannon. I am satisfied that the PA have adequately demonstrated housing need in the area.

7.4 **Suitable for Housing**

7.4.1 Section 6(5) of the Act determines the suitability of a site for housing having regard 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 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.

7.4.2 The subject site is zoned for residential development under the Shannon and Environs Local Area Plan 2012-2018. The County Plan sets out the core strategy for the county and details that it is anticipated that the population of Shannon will increase from 9,729 persons to 12,931 persons by 2023. It is stated that there will be a need for an additional 1,250 new houses to be delivered in the town by 2023.

7.4.3 The site is located in an established urban area and no constraints in terms of servicing by public infrastructure and facilities have been identified. I note that the appellant refers to pre application consultation that has taken place with regard to

the site. The PA have highlighted that supporting reports including a noise assessment and flood risk assessment should accompany any application. It is also noted that a feasibility study will be required by Irish Water regarding the viability of a sewer connection. Whilst these technical requirements are noted, I do not consider that they would be an impediment to the future development of the lands for residential development. They are typical technical reports that would accompany a planning application.

7.4.4 No factors have been identified that would affect the physical condition of the land which might affect the provision of housing.

7.5 The site, or the majority of the site, is vacant or idle

7.5.1 The appellant have not contested that the site is vacant. At the time of the site visit, it was clear that the site was vacant and idle and does not have any purpose.

7.5.2 The appellants main ground of appeal is that it is their intent to develop the lands. There is however, no provision in the legislation to prohibit the entry of a vacant site onto the register on the basis that a planning application for their future development may be progressed. The 2015 Act is only concerned with the actual use on site and whether it is performing a specific purpose in order to determine if a site is vacant/idle. In this instance, the site is clearly vacant at present and this appears to have been the case during the intervening period. I am satisfied that the site was a vacant site for the relevant time period and continues to be a vacant site.

7.6 Recommendation

7.6.1 I recommend that in accordance with Section 9(5) of the Urban Regeneration and Housing Act 2015 (as amended), the Board should confirm the entry on the register of site (VSR1 2019) that it was a vacant site for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 19th of December 2019 shall be deemed to take effect from that date.

8.0 Reasons and Considerations

8.1 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,
- (e) That the site is suitable for the provision of housing by reference to the provision of public infrastructure and facilities (within the meaning of section 48 of the Planning and Development Act, 2000, as amended) necessary to enable housing to be provided and serviced,
- (d) That the majority of the site is vacant or idle, there is a need for housing in the area, the site is suitable for the provision of housing, and that insufficient reason is put forward to cancel entry on the Vacant Sites Register,

the Board is satisfied that the site was a vacant site for the relevant period.

Erika Casey
Senior Planning Inspector

30th March 2020