



An
Bord
Pleanála

Inspector's Report ABP-300830-18

Type of Appeal	Section 9 Appeal against section 7(3) Notice.
Location	Lands at Terrysland, Carrigtwohill, County Cork.
Planning Authority	Cork County Council.
Planning Authority VSL Reg. Ref.	VS-0021.
Site Owner	Lyndubh Developments Ltd.
Date of Site Visit	16 May 2018.
Inspector	Stephen Rhys Thomas.

1.0 Introduction

- 1.1. This appeal refers to a section 7(3) notice issued by Cork County Council, stating their intention to enter the site at Terrysland, Carrigtwohill, County Cork on to the Vacant Sites Register (VSR) in accordance with the provisions of section 6(2) of the Urban Regeneration and Housing Act 2015.

2.0 Site Location and Description

- 2.1. The appeal site is located at Terrysland, a large area of land between existing housing development to the north of Carrigtwohill, County Cork. The appeal site is large and comprises a combination of lands where development works were begun during the last phase of house construction and land that is agricultural in character. Housing is located to the east, south and west of the site and a portion of the site bounds a railway line to the north. Carrigtwohill railway station is located to the north east. For the most part, the lands are level and a watercourse passes through the southern quarter of the site.

3.0 Planning Authority Decision

- 3.1. **Planning Authority Notice:** Cork County Council advised the site owner that the subject site (Planning Authority site ref. VS-0021) had been identified as a vacant site. The notice, issued pursuant to section 7 of the Act and dated 9 January 2018, stated that particulars of the site have been entered on the Vacant Sites Register. The notice was accompanied by two maps outlining different site boundaries.
- 3.2. **Register of Vacant Sites Report:** The site is subject to zoning objective R-01 in the Midleton Electoral Area Local Area Plan Second Edition January 2015. Medium A density residential development to include a mix of house types and density relative to the train station. Objective U-01, provision of a link road traverses the site. The draft Cobh Municipal District LAP 2016 (Cobh MD LAP) now zones the site CT R-01 (residential), CT X-01 (mixed use) and CT C-01 (schools), and two roads now traverse the site. The site is currently unused, it not used for agriculture. The remaining house on the overall site appears derelict and vacant. The update

planning report provides the status of the Cobh MD LAP 2017 and confirms zoning changes. An extensive planning history is outlined and includes residential, commercial and school permissions and a current planning application, PA reference 17/5399 refers. The lands are considered to be residential lands for the purpose of the VSL. The site is adequately serviced for residential development. The site is a vacant site in accordance with section 5(1)(a) and sections 6(4) and 6(5) of the 2015 Act.

The recommendation of entry on the register Report, states that part of the folio should be omitted from the register due to revised Community Zoning, but that the remainder of the site, zoned CT-R-01 should remain on the register. The site was visited on the 1 December 2016 and 4 or 7 December 2017. The Council's submission is supported by a copy of the section 7(3) Notice, site outlines, a copy of the entry on the register including a folio map, a copy of Cork County Council's approach to the implementation of the VSR, the recommendation of entry on the register, land registry details, colour photographs and colour zoning maps.

4.0 Development Plan / Planning History

- 4.1. The Cork County Development Plan 2014 is the operative development plan and the Cobh Municipal District Local Area Plan 2017 is the operative local plan. The site is located on lands that are subject to zoning objective CT-R-01 Medium density (A & B) residential development. The overall vacant site register reference number VS-0021 is also located on lands zoned CT-R-01 and CT-C-01 Land to provide for education purposes to include two primary schools and a post primary school with ancillary open space area suitable for playing fields.
- 4.2. Chapter 14 of Development Plan refers to Zoning and Land Use and includes variation number 1 with reference to implementation of the Vacant Site Levy in residential and regeneration areas as follows:

Vacant Sites Levy

It is the intention of Cork County Council to implement the provisions of the Urban Regeneration and Housing Act 2015, through the establishment of a Vacant Sites Register, identifying sites on which a vacant site levy can be applied. The planning

authority will proactively engage through the Municipal District sub-county structures, to identify suitable vacant sites on lands zoned residential and on lands designated as regeneration areas in this plan, which meet the criteria for inclusion in the vacant site register. This will be achieved through a focused application of the levy, facilitating sustainable urban development and bring such vacant sites and buildings in urban areas into beneficial use.

Regeneration Areas

The Urban Regeneration and Housing Act 2015, provides for the inclusion of objectives for the development and renewal of areas identified as being in need of regeneration. As part of the preparation of the Local Area Plans, regeneration sites have been identified in many of our towns. The main objective in identifying Regenerations Areas is to draw attention to the opportunities that exist to redevelop key areas within the towns, where such sites have the potential to contribute to the rejuvenation of the towns, deliver housing, and perhaps act as a catalyst for other developments. In accordance with the provisions of the Urban Regeneration and Housing Act 2015, regeneration areas may, in time, be subject to the Vacant Sites Levy where the regeneration area is vacant or idle and this has adverse effects on the amenities / character of the area.

County Development Plan Objective

ZU 5-1 Vacant Site Levy-Residential and Regeneration Areas

Encourage the development and renewal of areas, on lands zoned as residential that meet the criteria as set out in the Urban Regeneration and Housing Act, 2015 and on lands designated as regeneration areas, identified in Municipal District Local Area Plans, having regard to the Core Strategy, that are in need of regeneration, in order to prevent –

- (i) adverse effects on existing amenities in such areas, in particular as a result of the ruinous or neglected condition of any land,
- (ii) urban blight and decay,
- (iii) anti-social behaviour or
- (iv) a shortage of habitable houses or of land suitable for residential use or a mixture of residential and other uses”.

4.3. Planning History

Subject site:

PA reference **14/04668**. Amendment to a previously permitted residential development (00/7674 and ABP PL04.131129).

PA reference **14/4667**. Extension of permission for a primary school.

PA reference **14/4666**. Extension of permission for a retail warehouse.

PA reference **14/4669**. Extension of permission for amendments to a residential development.

PA reference **13/5949**. Extension of permission for 18 dwellings.

It would appear from the planning history submitted by the planning authority that a large number of amendments and extensions of the appropriate period stem from a parent permission for a large scale residential and school use scheme, PL 04 131129 refers (813 residential units, reservations for a secondary school and park and ride facility).

5.0 The Appeal

5.1. Grounds of Appeal

5.1.1. The landowner has submitted an appeal to the Board, against the decision of Cork County Council to enter the subject site on the Register. The grounds of the appeal can be summarised as follows:

- The appellant states that they have recently acquired the lands subject to placement on the register.
- A query is raised why two maps accompanied the Notice, however, the appellant states that they have legal interest in only a portion of the lands in question. Namely, plans marked 12_2 and 12 on the map folio number CK30829 attached with the grounds of appeal.
- A planning application has been lodged (reference number 17/05399) for residential development and a response to a further information request is being prepared. It is inappropriate to place the site on the register.

The appeal is supported by a proposed site layout for residential development and a Property Registration Authority map.

5.2. Planning Authority Response

5.2.1. The Planning Authority responded to the appeal, requesting that the following observations be noted by the Board:

- The Council note that a change of ownership has occurred and advise that section 17 of the 2015 Act makes allowances for reduced levy if a request is made by the landowner.
- Clarification regarding mapping – the map initially sent to the landowner with the notice of proposed entry on the register comprised the entire site VS-0021. The map that accompanied the notice of entry on the register related specifically to the folio that is the subject of the entry on the register.
- Given that the site is pending the outcome of a planning application, the status and application of the levy can be updated at any time.
- It is considered that the site satisfies the requirements for entry onto the Vacant Sites Register.

6.0 Assessment

- 6.1. An appeal under section 9 of the Act, requires that the burden of showing that the site or a majority of the site was not vacant or idle for the 12 months preceding the date of entry on the Register is on the owner of the site. Section 9(3) of the Act states that the Board shall determine whether the site was vacant or idle for the duration of the 12 months concerned or was no longer a vacant site on the date on which the site was entered on the register. The subject site was entered onto the Cork County Council VSR on the 9 January 2018.
- 6.2. By reference to the planning authority notice, it is stated that the subject site comprises residential land for the purposes of the Vacant Site Levy. The subject site is located in an area zoned CT-R-01: Medium B density residential development, in the current Local Area Plan. Objective ZU 5-1 Vacant Site Levy-Residential and Regeneration Areas of the County Development Plan to encourage the development and renewal of areas, on lands zoned as residential that meet the criteria as set out in the Urban Regeneration and Housing Act, 2015 and on lands designated as regeneration areas, identified in Municipal District Local Area Plans. This assessment takes into account the characteristics of the site in the context of Section 5(1)(a) residential land. The overall vacant site map outline that accompanied the Council's Notice to Enter with the reference number VS-0021 is also subject to CT-C-01: Community Use. However, according to Council's own Vacant Site Register, only one entry is made for site reference VS-0021 and that site outline conforms to a second map with the folio reference 30829.
- 6.3. The Board should note that there is a lack of clarity in identifying the extent of the lands that are subject to the Vacant Site Register. I note that the Council have submitted a response regarding map outlines. My interpretation of the Council's clarification statement is that Vacant Site Register reference VS-0021 refers to the map outline attached to the Council Notice of Entry but is specifically related to the additional map with the folio number referenced on the Vacant Site's Register, i.e. folio 30829. In this respect, I note that there is a single entry for VS-0021 and the owner is given as John Horgan, but the appellant in this case is Lyndubh Developments Limited. It is my view that VS-0021 should relate to the overall site as

attached to section 7(3) Notice, yet there are no other landowners referenced in relation to VS-0021 on the register. I am concerned that not all landowners have been notified.

- 6.4. The appellant has also queried the attached maps and extent of the vacant site outline. They also state that they have recently acquired the legal interest to portions of land that appear to be contained within the outline of VS-0021. In addition, the appellant claims that the site should not be included as a current planning application is in train to develop the lands and so it is not appropriate to enter the site on the register.
- 6.5. I have serious concerns regarding the entry of VS-0021 on the Council's VSR, for the following reasons:
- There are two different site outlines that accompanied the Council's Notification to Enter, both with the same VSR reference number, though only the smaller area map with the folio number 30829 is publicised on the Council's Register.
 - There is a single entry on the Register with a single map outline and it does not refer to the appellant.
 - The appellant has furnished information as to recent legal ownership changes to part of the smaller site but not all. It is not clear if other landowners should have been notified and whether their lands were assessed by the planning authority for vacant or idle status over the relevant period.
 - The larger site area shown on the map that accompanied the Council's Notice to Enter the site on the register includes lands that are zoned for community/utility and playing field purposes.

Firstly, I note that the planning authority recommended that part of the site on community zoned land should be omitted, yet both the large overall site and smaller portion remain. The Board do not have any role or function in amending maps associated with Section 7(3) Notices. In this case, it would appear that a number of landowners may not have been notified of the inclusion of their lands on the register and lands have been included that are not zoned for residential uses. In my view, the

procedures employed by the Council to delineate VS-0021 are misleading and for the Board to confirm the entry on the register could be unsafe. In my mind, there would be no certainty as to what piece of land any levy should attach to. In addition, I cannot be certain that the entirety of the lands were assessed by the planning authority with respect to vacant or idle status over the 12 months concerned. However, if the Board are minded to consider in full the appeal on its merits and solely in relation to the site in question i.e. folio 30829, the following assessment is of relevance.

- 6.6. Firstly, the appellant has not raised any issue with regard to whether or not there is a housing need or if the site is suitable for housing. Nor has the appellant questioned the vacant or idle status of the site. In this respect, I note that the site is zoned for residential purposes and has an extant planning permission, the site is therefore suitable for housing and there is a housing need in the area. I observed no obvious use for the site in question, in rudimentary terms the site and adjacent area is laid out as fields for grazing but productive agriculture did not appear to be taking place. The wider area could be characterised as disturbed wasteland. I am satisfied that the site conforms to the criteria for a vacant site as set out in section 5(1)(a) of the 2015 Act.
- 6.7. On the matter of a current planning application or indeed an extant planning permission for the site, the Act is clear; the test for inclusion is the past condition of the site from the date of entry on the Register. I refer to Circular Letter PL7/2016, Appendix 3, that states: “where a vacant site has an extant planning permission associated with it, this should not be a consideration in determining whether to apply the levy. If such a site meets the criteria for a vacant site in respect of either residential or regeneration land, then the levy may be applied”. In my opinion, the site meets the criteria for inclusion on the VSR and the existence of an extant planning permission or an ongoing planning application has no part to play in this instance
- 6.8. The appellant states that they have recently acquired ownership of the majority of the site and a significant portion they have no interest in. The ‘owner’ of a site is included in the definitions set out in section 3 of the 2015 Act, owner means as follows:

(a) in relation to land that is registered land within the meaning of the Registration of Title Act 1964 , the registered owner, and

(b) in relation to all other land, a person, other than a mortgagee not in possession, who, whether in his or her own right or as trustee or agent for any other person, is entitled to receive the rack rent of the land or, where the land is not let at a rack rent, would be so entitled if it were so let;

Ownership has no impact upon the assessment of whether a site should be included on the register or not. Section 17 of the 2015 Act, sets out procedures in relation to the charging of the levy, change of ownership is relevant in that instance.

Irrespective of any change or confirmation of ownership within the meaning of the 2015 Act, the burden of demonstrating whether a site is vacant or not lies with the owner of the site, as set out in Section 9(2) of the 2015 Act.

- 6.9. The site is zoned residential and this suggests there is a need for housing in the area. In addition, the majority of the site is suitable for the provision of housing as evidenced by an extant planning permission and the residential land use zoning. However, there is an unacceptable level of doubt as to the boundary of the vacant site and doubt too whether or not all landowners have been notified in accordance with the requirements of the Act. Given the foregoing, I conclude that the Board cannot know precisely which lands are on the register and cannot therefore confirm that the majority of the site is vacant or idle in accordance with section 5(1)(a), 6(4) and 6(5) of the 2015 Act and therefore should cancel the entry.

7.0 Recommendation

- 7.1. I recommend that, given the requirements of section 9(3) of the Urban Regeneration and Housing Act 2015, the Board cannot determine with certainty that the entirety of the site at Terrysland, Carrigtwohill, County Cork was vacant or idle for the duration of the 12 months concerned or was no longer a vacant site on the date on which the site was entered on the register. Therefore, the entry on the Vacant Sites Register on the 9 January 2018 shall be cancelled.

8.0 Reasons and Considerations

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 Inspector,
- d) The lack of clarity regarding the extent of the vacant site boundary and consequently the unacceptable degree of uncertainty regarding the complete assessment of the entire site with regard to vacant or idle status over the 12 months concerned,
- e) the procedural errors in relation to the Map issued with the Section 7(3) Notice,

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.

Stephen Rhys Thomas
Planning Inspector

25 June 2018