



An
Bord
Pleanála

Inspector's Report ABP-300837-18

Type of Appeal	Section 9 Appeal against section 7(3) Notice.
Location	Knocknahorgan, Glanmire, County Cork.
Planning Authority	Cork County Council.
Planning Authority VSL Reg. Ref.	VS-0031.
Site Owner	Michael Kearney.
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 Knocknahorgan, Glanmire, 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 to the north of Glanmire, approximately 8km north east of Cork City on the western side of the River Glashboy Valley.
- 2.2. The appeal site is located on an elevated site within the townland of Knocknahorgan in Sallybrook. The area is characterised as agricultural with low to medium density residential development. The appeal site is part of a larger field network in grazing use. The southern and western boundaries comprise mature hedgerow and the remaining boundaries are undefined.

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-0031) 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 Blarney Electoral Area Local Area Plan Second Edition January 2015. Medium B density residential development subject to significant planting on the northern and western edges and protection of vulnerable slopes. The draft Cobh Municipal District LAP now zones the site GM R-01 medium B density residential development with similar landscape considerations as before. The site is currently in agricultural use. The update planning report provides the status of the Cobh Municipal District LAP 2017 and confirms zoning changes and the site appears to have no functional use. The planning history on the site includes an extant permission for 89 houses. The

site can be adequately serviced for residential development. The lands are considered to be residential lands for the purpose of the VSL. 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 site was visited on the 23 November 2016 and 23 November 2017. The Council's submission is supported by copies of the section 7(3) Notice served to the landowner, site outlines, copies of the entry on the register, land registry documentation and maps, a copy of Cork County Council's approach to the implementation of the VSR, the recommendation of entry on the register, 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 GM-R-01: Medium B density residential development, with advanced strategic planting, to be retained in the long-term, on the northern and western edges of the site to act as a definite limit to any further development in this area. Development of these lands should include landscaping and protection of the more vulnerable slopes.
- 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

Adjacent to subject site:

PA reference **16/5554** and An Bord Pleánala reference **PL04 .248234**. Permission for 77 houses. October 2017.

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 was at first confused by the maps sent to them under the initial letter.
- The site subject to the register comprises 0.4 acre with a farm roadway through and is used for grazing cattle, herd number 3980449D. In addition, farm compliance material has been submitted to confirm the site's use for agriculture. Various farm contractors (hedge cutting, baling, topping and spraying) have worked the site during 2017.
- The lands are not vacant or idle.

The appeal is supported by a Department of Agriculture aerial photograph, outlining the site, herd number and an application form for a farm basic payment.

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:

- All correspondence sent to the landowner, were sent in accordance with the 2015 Act.
- The Council note that land in use for agriculture but zoned for residential purposes can be placed on the register.
- 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 and accompanying maps, 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 GM-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.
- 6.3. The Board should note that this appeal is made with reference to a portion of a much larger vacant site with the Council reference number VS-0031. According to the Council's records, three folio reference numbers refer to the entire vacant site as follows: 123800F and 170154F in the ownership of Bluescape Limited, and 39600 in the ownership of Michael Kearney. The appeal before the Board is made by Michael Kearney and the grounds of appeal relate solely to the land in his ownership. It is my view that because an appeal has been made by one landowner with regard to site reference VS-0031, then it is fair process that the entirety of the vacant site should be considered together as one.
- 6.4. The appellant states that they were initially confused by the notice served and the accompanying maps, however, the Council clarified matters hence the appeal. In essence, the appellant states that the majority of the site is in use for agriculture; grazing cattle; and that the farm roadway provides access to and from the field. The lands are continually maintained, hedge trimming, grass topping and forage production. The lands are not vacant, they are in full use.
- 6.5. In response, I note that the Council state that all notices sent to the landowner were processed in accordance with the 2015 Act. Though the land is in use for agriculture, farm land can be included on the register and so the site satisfies the requirements of the 2015 Act.

- 6.6. Firstly, I note the appellant's concerns with regard to the notice and the accompanying maps. I note also the Council's response that the requirements of the 2015 Act were followed in the implementation of the Vacant Site Levy. Given, that the landowner has successfully made an appeal to the Board, I conclude that the landowner has not been disadvantaged in any way and that the Council followed the relevant steps in the establishment of the register, including notification to all landowners. Therefore, no further action is required in relation to this matter.
- 6.7. At the outset, I have advised the Board to note that the entire vacant site with the Council reference number VS-0031 is in multiple ownership and the landowner of a minor portion of the vacant site has made this appeal. The other landowner has not made a section 9 appeal. The status of the current appeal and the impact of the outcome of a decision of the Board either to confirm or cancel the entry on the register requires clarity. In practical terms, if the appeal is unsuccessful and the Board confirm the entry of the site on the register, the entire site stands on the register. However, if the appeal is successful and the Board decide to cancel the entry of the site, logically the entire site with the reference number VS-0031 is removed from the register. I would conclude that this is the case as there is no mechanism for the Board to amend or alter the terms of the entry of the vacant site on the register. It is my view that the Board's role is simply to either confirm or cancel the entry of the vacant site on the register irrespective of single or multiple ownership. If the vacant site has been appealed by even a single landowner, when that vacant site is in multiple ownership, then the entire vacant site should be considered. The decision of the Board either to confirm or cancel shall relate to all landowners notified by the Council.
- 6.8. That being so, the appellant states that the field and roadway are in full use for agriculture and has submitted documentary information to support the claim. The greater balance of the site is also laid as pasture with an agriculturally marginal and steeply sloped portion at the eastern side. I agree that the field and roadway together with the balance of the entire site are in use for agricultural purposes as demonstrated by the expanse of grazing pasture land, electric stock fence and the overall appearance and characteristics of the field.
- 6.9. The Board should note that there are a number of concurrent appeals in Cork County Council's functional area that relate to agricultural lands and the VSR. The

relevant file reference numbers are as follows: ABP-300827-18, ABP-300844-18 and ABP-300842-18.

- 6.10. The appellant has raised the question as to the inclusion of agricultural lands that are in use on the VSR. The site as outlined by the planning authority is in agricultural use. However, the use of the fields for agricultural purposes does not protect the overall site from entry on the register. Circular Letter PL 7/2016 sets out guidance in relation to the implementation of the Vacant Site Levy as provided for in the 2015 Act. Specifically, appendix 3 of the circular letter sets out practical matters to note when identifying vacant sites, the following paragraph refers:

Sites may be in areas where the land is zoned for a particular purpose, e.g. residential. However, pending development appropriate to its zoning, the land may currently or on an interim basis have an agricultural use. Given the purpose of the levy, particularly in the context of the provision of housing, in such cases the levy may be applied, as the site concerned is not being used for the purpose for which it was zoned.

This is the case with the appellant's land; it is in agricultural use and it is zoned for residential purposes. The planning authority's 'Implementation of the Vacant Sites Register and Levy' document states the following:

However, a question might arise as to whether a site located on lands actively in use for agriculture could legitimately be considered vacant or idle. It might be prudent to exclude such sites from the register if there is evidence of the active use of such lands for such purpose.

The planning authority note the likely use of a portion of the site for agriculture, but nevertheless include the appellant's land in combination with the majority of the vacant site on the register. The planning authority offer no explanation for the inclusion of Michael Kearney's land (Folio 39600). This casts doubt on the approach and transparency of the implementation policy devised by the Council, with respect to agricultural lands. Neither the Board nor Local Authorities have received new advice from the Department of Housing, Planning and Local Government that concerns amendments to the 2015 Act with reference to farmland and the vacant site register. In the absence of any new information in this regard, I am bound by the Act and any supporting information issued by the Department. Even though the site

is in agricultural use, this may not necessarily be a factor to restrict inclusion on the register. In accordance with the circular letter, the ongoing agricultural use has no part to play in this instance.

6.11. The overall site is zoned residential and this suggests there is a need for housing in the area. In addition, the great majority of the site is suitable for the provision of housing as evidenced by a current planning permission and the residential land use zoning. Given the foregoing, I conclude 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. I would also note that this 'site' comprises two separate fields with three separate folios in multiple ownership and arguably should not have been considered as one site.

7.0 Recommendation

7.1. I recommend that, in accordance with section 9(5) of the Urban Regeneration and Housing Act 2015, the Board should confirm that the site at Knocknahorgan, Glanmire, County Cork was vacant or idle for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 9 January 2018 shall be deemed to have effect from that date.

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 that refers to the entirety of vacant site register reference number VS-0031,
- d) The need for housing in the area, that the site is suitable for housing and that insufficient reason is put forward to cancel entry on the Vacant Sites Register,

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

Stephen Rhys Thomas
Planning Inspector

25 June 2018