



An  
Bord  
Pleanála

## Inspector's Report ABP-300838-18

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| <b>Type of Appeal</b>                   | Section 9 Appeal against section 7(3) Notice.                  |
| <b>Location</b>                         | Cill Mhuire, Church Hill, Pembroke, Passage West, County Cork. |
| <b>Planning Authority</b>               | Cork County Council.   |
| <b>Planning Authority VSL Reg. Ref.</b> | VS-0013.   |
| <b>Site Owner</b>                       | TFT Construction Ltd.  |
| <b>Date of Site Visit</b>               | 17 May 2018.   |
| <b>Inspector</b>                        | 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 Cill Mhuire, Church Hill, Pembroke, Passage West, 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 Marmullane, Pemboke in Passage West, Co. Cork. The site is surrounded by residential development. Ard Chuain, a development of 18 serviced sites, is located to the northeast and accessed through the older Beechcourt development. Hillcrest and Bloomingdale to the south comprise predominantly single storey dwellings, while the Pembroke development and Ardmore estate at a lower level to the west and northwest, comprise a mixture of dwelling types. St. Mary's cemetery lies to the northwest, accessed through Ardmore Estate. The site is currently accessed from Church Hill, via the estate roads of Ard Chuain and Beechcourt estate.

The site is laid out as a low density self-build housing estate with serviced plots and comprises: estate roads, footpaths, street lighting, landscaping, tree planting, a completed dwelling and one under construction. The north western portion of the site includes an overgrown and wooded escarpment that slopes steeply to the north and includes heaps of stockpiled topsoil.

## 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-0013) 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 the same site and boundaries.
- 3.2. **Register of Vacant Sites Report:** The site is subject to zoning objective R-03 in the Carrigaline Electoral Area Local Area Plan Second Edition January 2015. Medium A

density residential development. The draft Ballincollig Carrigaline District LAP now zones the site PW R-03 medium A density residential development. The site is currently under construction for houses. The update planning report provides the status of the Ballincollig Carrigaline Municipal District LAP 2017 and confirms zoning and changes in the condition of the site. It is stated that as of 24 November 2017 two thirds of the site is being developed for housing, almost two houses complete and serviced sites have been set out, along with roads. No other uses detected for the remainder of the site. The planning history on the site and in the vicinity is extensive and includes extant permissions. 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 22 November 2016 and 24 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, a copy of Cork County Council's approach to the implementation of the VSR, the recommendation of entry on the register which includes a response to the landowners initial submission, 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 Ballincollig Carrigaline Municipal District Local Area Plan 2017 is the operative local plan. The site is located on lands that are subject to zoning objective PW-R-03: Medium A density residential development.

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 **16/4389** and An Bord Pleánala reference **PL04.246996**. Permission for a house at site number 1.

Other permissions relate to the remainder of the serviced sites under An Bord Pleánala reference **PL04.242980**, (i.e. Site Nos. 2-12) pursuant to PA reference. 16/4390 – 16/4400 inclusive.

PA reference **13/5607** and An Bord Pleánala reference **PL04.242980**. Retention and completion of entrance and access road previously permitted under PL04.130502 and permission for 12 serviced sites. June 2014.

Relevant conditions include:

2. The siting, design, and layout of the houses to be served by the site development works herein permitted shall be subject to separate planning application(s). All houses shall be single storey, or single storey with split level floors. No two-storey or dormer houses shall be permitted.

Reason: In the interest of clarity and visual amenity.

4. All site development works, with the exception of the laying of the final dressing to the road surface, shall be completed to the written satisfaction of the planning authority prior to commencement of construction of any dwelling units on the site.

Reason: To ensure the timely provision of infrastructural works for the development.

9. The areas of public open space shown on the lodged plans shall be reserved for such use and shall be soiled, seeded, and landscaped in accordance with the detailed requirements of the planning authority. This work shall be completed prior to the commencement of construction of any dwelling units on the site and shall be maintained as public open space by the developer, or by the estate management company until such time as the development is taken in charge by the local authority.

Reason: In order to ensure the satisfactory development of the public open space areas, and their continued use for this purpose.

PA reference **12/5129** and An Bord Pleánála reference **PL04.241461**. Permission refused for 25 serviced residential sites. April 2013.

## 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 solicitor acting on behalf of the appellant outlines the background to the site history including entry on the register. The site was previously in pasture and was purchased by the appellant in December 2015 with the benefit of planning permission for 12 serviced sites. In 2016 permission was permitted for a change of house design on each site.
- The property affected by the vacant site register is not a vacant site within the meaning of section 5(1)(a) of the 2015 Act.
- The site does not consist of regeneration land.
- The planning authority did not have regard to the appellant's submission and so section 7(2) of the 2015 Act has not been fully complied with, did not give weight to the submitted evidence and followed a circular guideline contrary to the 2015 Act.
- Contrary to section 6(2) of the 2015 Act, the planning authority failed to make reasonable enquiries and establish that the site was not and had not been vacant or idle for the twelve months concerned.

Supporting information is outlined as follows:

- The appellant is no longer the owner of four of the sites concerned (a further site is still pending change in ownership), and notice has not been served on those owners.

- Development works commenced on the site 15 March 2016 and have proceeded on a continuous basis until about 10 May 2017. A schedule of works has been submitted to support the claim, costings of €484,000.00.
- Building works on site 1 and 6 are ongoing.
- The sites are being actively marketed by Cohalan Downing. A cover letter from the marketing agent outlines the dates of advertisement in the press, the number of 'hits' recorded on internet based property pages and a breakdown of sites sold, sale agreed and for sale.
- Colour photographs submitted 14 February 2018 detail the roads and footpaths associated with the development and the various stages of construction of two houses.

## 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 planning authority refers to documents already submitted (Planner's reports, implementation document and the recommendation to enter the site on the register) in order to support their position.
- The site is not regeneration land.
- The planning authority took the appellant's initial submission into account, as detailed in the 'Recommendation of entry of site onto vacant site register'.
- With reference to section 6(2) of the 2015 Act, two thirds of the site comprise development to facilitate the 12 serviced sites, the remainder remains vacant. Of the area for services sites, less than 2 of the 12 sites have so far been developed. Notwithstanding the extent of the development works, the site remains vacant or idle in accordance with the 2015 Act.
- Section 17 of the 2015 Act provides for the change of ownership of a site and relies on the new owner making a submission to the planning authority. No submission has been received in relation to Folio Reference 169383.

- The planning authority have at all reasonable times made themselves available for consultation in the relation to the 2015 Act and all requirements of the Act have been met in full.
- It is considered that the site satisfies the requirements for entry onto the Vacant Sites Register.

### **Further Responses**

- The **planning authority** have submitted revised photographs from an inspection of the site on 18 May 2018 and confirm the extent of works carried out. It is also noted that a 'sites for sale' notice is erected on the site. Works have not progressed any further than the previous inspection.
- The **appellant** has responded to the planning authority's initial submission as follows: a dispute over the definition of vacant or idle, whether it is given its ordinary meaning or the special meaning attributed to it by the 2015 Act. There is no evidence that the planning authority had regard to the appellant's initial submission to the section 7(2) notice. For the 12 month period the site was undergoing site development works and these works should be taken into consideration. Four of the sites are in the process of sale, no acknowledgment of this fact has been made by the Council. It is a condition of planning that before house can be occupied all services have to be in place and operational. This has been done by the developer and now the sites are in the process of sale and development.

## **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 PW-R-03: Medium A 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 appellant states that the site was acquired in 2015 and that permission was obtained in 2016 for changes to a permission. Since that time, works have been ongoing to establish the works necessary and required by the planning permission to install services, roads infrastructure and open space. In addition, to date a house has been completed and another is under construction. The now fully serviced sites are on the market and purchasers are being actively pursued. The appellant maintains that the site is not vacant or idle. The appellant also outlines issues with the administrative procedures in the establishment of the register and that ownership of several sites is about to change.
- 6.4. The planning authority have responded to the appellant's claims, however, they maintain that works have not progressed during the relevant period and therefore the site is vacant or idle within the terms of the 2015 Act. The planning authority also maintain that all procedures were followed appropriately and the appellant's initial submission under the section 7(2) Notice was acknowledged.
- 6.5. There are a number of issues that arise out of this appeal. Firstly, there is no dispute with regard to the suitability of the site for housing or the need for housing in the area. In any case, the site is clearly suitable for housing given the recent planning permission and the ongoing construction of houses on the site. There is some disagreement with regard to the ownership of individual sites, however, matters regarding changes in ownership can be clarified under section 17 of the 2015 Act. Indeed, should individual serviced sites progress to houses, then it is the responsibility of the owner to notify the Council under section 10 of the 2015 Act and request removal from the register. I consider all of these matters to be ancillary to the appeal and remedy can be had by local engagement between landowner and local authority under the relevant sections of the Act.

- 6.6. The principal matter in this appeal is the status of the lands during the relevant period, i.e. vacant or idle. Firstly, I note that the site was inspected on the 22 November 2016 and again on the 24 November 2017. During that period, the planning authority concluded that even though two houses were under construction and roads and infrastructure were in place, a third of the site remained vacant. The landowner was notified on the 21 November 2017 of the Council's intention to place the site on the register. Of note is that the Planner's initial report anticipated that the site would not be vacant or idle for the relevant period as houses were under construction and the updated report of November 2017, agreed and advised further monitoring.
- 6.7. My observations of the site in May 2018 confirm the statements made by both the planning authority and the appellant. The entrance and access roads are in place, footpaths and public lighting is installed, tree planting and grassed areas have been completed and are maintained. The individual serviced sites are marked out with fencing. One house is completed and inhabited, another is nearing completion. A portion of the site to the rear is used for storing topsoil and the steeply sloped portion of this area is overgrown.
- 6.8. There is a fine balance to be struck between whether or not a site is vacant or idle. The Act states that the majority of the site must be vacant or idle, in my mind that would entail more than half of the site to be vacant or idle. The planning authority have adopted different approach and despite the two thirds of the site laid out as serviced sites contend that the undeveloped sites and the unused balance of the site combine to render the site vacant and idle.
- 6.9. However, I think that this is a superficial assessment of the site. Firstly, I note that permission was granted on appeal for retention of an access and road in addition to permission for 12 serviced sites in June 2014. A number of conditions required a significant amount of infrastructure, including all development works such as roads and landscaping to be in place prior to the commencement of house construction, I have reproduced the relevant conditions above. In addition, condition number 2 requires that each site is subject to a separate planning permission with regard to individual house design, each site has permission for a dwelling since 2016. It is inevitable that there might be delays in the delivery of housing on this overall site, even though each site has the benefit of a permission. Four years have elapsed

since the relevant permission and all infrastructure has been delivered. Two years have elapsed since permission for individual houses on each site was granted, houses are on site and the developer is actively seeking purchasers for the remaining sites.

6.10. I think that given the particular planning constraints attached to this site, insofar as each serviced site must obtain planning permission and that the site is ready to accommodate housing; it is unreasonable to consider that the site is either vacant or idle. The site is zoned for residential purposes, infrastructure is in place and housing construction is ongoing and was ongoing during the relevant period. The pace of development may be slow, but I think it is unreasonable to ignore the significant amount of works that have taken place to date. In addition, the particular method of delivering houses to this site is by its very nature slow and convoluted. I am satisfied that the site is neither vacant or idle, it is simply part of a lengthy planning process, development has commenced and the site is being put to beneficial use. Incidentally, the overall site is open to the public, who can avail of the roads, footpaths, open space and parts of the site are in full use for residential purposes.

## **7.0 Recommendation**

7.1. I recommend that, in accordance with section 9(3) of the Urban Regeneration and Housing Act 2015, the Board determine that the site Cill Mhuire, Church Hill, Passage West, County Cork was not 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 Cork County Council Vacant Site Register 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 extent to which the site has been developed for the accommodation of housing, that dwellings are inhabited and under construction and that the site is being put to beneficial use,

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

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Stephen Rhys Thomas  
Planning Inspector

25 June 2018