



An
Bord
Pleanála

Inspector's Report ABP-300842-18

Type of Appeal	Section 9 Appeal against section 7(3) Notice.
Location	Lands at Ballynoe, Cobh, County Cork.
Planning Authority	Cork County Council.
Planning Authority VSL Reg. Ref.	VS-0014.
Site Owner	Eamon Russell, Breda O'Leary and Kay Larkin.
Date of Site Visit	17 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 Ballynoe, Cobh, 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 Ballynoe, north of Cobh, County Cork. The site is accessed from a minor country road off the R624. The site comprises agricultural fields with a road frontage of approximately 280 metres. The site includes two large fields and the portion of a third. The fields are currently in grass with grazing cattle. The fields slope upwards from the road and the boundaries comprise mature hedging and trees.

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-0014) 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 three 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 B density residential development to include a mix of house types and density. The draft Cobh Municipal District LAP 2016 (Cobh MD LAP) now zones the site CH-R-01 medium B density residential development. The site is likely to be used for agriculture. The update planning report provides the status of the Cobh MD LAP 2017 and confirms zoning changes. There are two planning permissions on the adjoining site. 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 site was visited on the 15 November 2016. The Council's submission is supported by copies of the section 7(3) Notice served to each landowner, site outlines, copies of the entry on the register including folio maps, a copy of Cork County Council's approach to the implementation of the VSR, the recommendation of entry on the register, land registry details, a response to a submission received, 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 CH-R-01 Medium B density residential development to include a mix of house types and sizes.
- 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:

None.

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 refers to their original submission in response to the section 7(3) Notice, in which issues of disputes between parties is cited.
- It is outlined that the site is owned by four joint owners Eamonn Russell, Breda O’Leary, Kay Larkin and Maureen Fleming. Three of whom are happy to sell the site but the fourth is not. The dispute is intractable and relates to the property being the subject of a charge in favour of the deceased’s estate for the purchase price of the estate.
- The land is currently in use for agriculture and the site should be removed from the register.

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 land in use for agriculture but zoned for residential purposes can be placed on the register.
- There is no provision in the 2015 Act to deal with legal disputes between parties.
- 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 CH-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 vacant site with the Council reference number VS-0014. According to the Council's records, two folio reference numbers refer to the entire vacant site as follows: 32721F and 28174 in the ownership of Eamonn Russell, Breda O'Leary, and Kay Larkin. The appeal before the Board is made by three owners of the entire site and the grounds of appeal relate to lands in use for agriculture and intractable legal issues. It is my view that because an appeal has been made by a number of landowners with regard to site reference VS-0014, then it is fair process that the entirety of the vacant site should be considered together as one.
- 6.4. According to the appellants there are two principle issues at stake. Firstly, is the matter of ownership/legal dispute and the second is the use of the lands for agricultural purposes. The issue of ownership/legal dispute does not have a bearing on whether or not a site should be included on the register. However, once a site is on the register, matters of ownership and change of ownership are relevant and this is governed by section 17 of the Act. I do have concerns about the ownership complexities that surround vacant site VS-0014. The overall site comprises two folio numbers, that according to Council records are in the ownership of three individuals, namely: Eamonn Russell, Breda O'Leary, and Kay Larkin, these are the appellants. However, the grounds of appeal reference a Maureen Fleming as an owner, but I see no Council documentation that states she was notified with respect to either section 7(1) or 7(3) notices. The Council have submitted Land Registry documentation and Maureen Fleming is detailed as a ¼ owner. It is not clear why the fourth owner of the lands was not issued with any notices from the Council with respect to placement on the register.
- 6.5. The Board do not have any role or function in amending maps associated with Section 7(3) Notices and this case it would appear that the two folio numbers are

inseparable from the four registered owners. The Boards role is to confirm or cancel the Section 7(3) Notice before them. Therefore, I would suggest to the Board that given the multiple ownership of the site and the possible failure to issue one of the owners whose lands are included within the lands outlined on the maps that accompanied the notices, the section 7(3) Notice should be cancelled.

- 6.6. 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-300837-18 and ABP-300844-18.

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 necessarily 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 use of the site for agriculture, but nevertheless include the appellant's lands on the register. The planning authority provide no explanation for the inclusion of the farm lands other than citing the relevant section of

the circular. This creates doubt about 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 2015 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.

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 cancel the entry on the register of site reference VS-0014 at Ballynoe, Cobh, 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 removed.

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 procedural errors in relation to the Map issued with the Section 7(3) Notice and

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