



An
Bord
Pleanála

Inspector's Report ABP-300844-18

Type of Appeal	Section 9 Appeal against section 7(3) Notice.
Location	Lands at Ballyvoloon, Cobh, County Cork.
Planning Authority	Cork County Council.
Planning Authority VSL Reg. Ref.	VS-0017.
Site Owner	James Crowley.
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 Ballyvoloon, 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 Ballyvoloon, within the northern suburbs of Cobh, County Cork. The site is large and comprises farmland and disturbed ground originally developed as part of the last phase of house building in the area. The western portion of the site is characterised by made up level ground associated with the Cooline Avenue housing estate, with mounded earth overgrowth with scrub. The eastern portion of the site is steeply sloping and characterised by farmland.

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-0017) 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 site boundaries.
- 3.2. **Register of Vacant Sites Report:** The site is subject to zoning objective R-04 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 and a sports pitch. The draft Cobh Municipal District LAP 2016 (Cobh MD LAP) now zones the site CH R-04 medium A density residential development, including sports pitch and connections to the north. The site may be used for agriculture. The update planning report provides the status of the Cobh MD LAP 2017 and confirms zoning changes and no change in the use of the site. The planning history on the site and in the vicinity is extensive and includes extant permissions and measures to remediate an unfinished estate. 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 15 November 2016 and 20 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 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 CH-R-04 Medium A density residential development to include a mix of house types and sizes and to include the provision of a sports pitch. Any layout shall be designed to allow for connectivity with, and in particular pedestrian and cyclists movements between, the masterplan lands to the north.

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 **14/4847**. Permission to extend the duration of a planning permission for 280 dwellings, creche and sports pitch, 05/2345 refers

PA reference **13/4481**. Revisions to site layout granted planning permission for 280 dwellings, creche and sports pitch, 05/2345 refers.

PA reference **08/7901**. Revisions to site layout granted planning permission for 280 dwellings, creche and sports pitch, 05/2345 refers.

5.0 The Appeal

5.1. Grounds of Appeal

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 the following issues are raised: the site is landlocked and cannot be serviced, the site is used for agricultural purposes, and offers to sell the lands to the Council. The response to the submission is attached to the appeal.
- The appellant appeals the entry on the register in the context of their submission to the Council.

5.2. Planning Authority Response

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.
- The site forms part of a larger residentially zoned area and the Council are satisfied that they can be serviced subject to detailed design at planning stage.
- 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-04 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 Board should note that the planning authority have drawn up the boundaries of Vacant Site Register reference number VS-0017 to include multiple owners. It is a large site and includes a number of land owners, one of which is the appellant. The published register states that the following all have a legal interest in the lands that comprise VS-0017: John J Fleming Construction Limited (Folio 11871F), James Crowley (Folio 42014), William Kelleher (Folio 58017F), Anne Crowley (Folio 162039F) and John Barry (Folio 31002). The appeal before the Board is made by James Crowley and the grounds of appeal relate to its use for agriculture, the lack of services and its landlocked location. It is my view that because an appeal has been made by one landowner with regard to site reference VS-0017, then it is fair process that the entirety of the vacant site should be considered together as one.
- 6.4. That being so, the appellant states that the site is in agricultural use for grazing cattle. The site is level adjacent to existing housing and also has a significant slope but is in grass for the most part. The field boundaries are fenced and secure. It is highly likely that that the field is in use for grazing, though no livestock were on site during my site visit. The portion of the site that is the subject of this appeal is landlocked with no direct access to public roads. The Council have stated that the entire vacant site is suitable for housing and that there are no infrastructural constraints to developing the site. In addition, the Council state that there is a need for housing in the area.

6.5. The appeal site is zoned for residential uses and forms part of a much larger Vacant Site that has an extant planning permission for housing. Even though the appellant's lands are removed from the public road and are subject to a significant slope in places, I am satisfied that the entire Vacant Site (VS-0017) is suitable for housing. In addition, the planning authority have prepared a detailed implementation document that provides the information and research carried out to establish the register. The 2015 research includes tabular data that details house prices, rental prices, social housing support and the percentage of housing stock for sale. The data leads the planning authority to conclude that there is a need for housing in the Cork Metropolitan area. In addition, the planning authority's core strategy identifies the need for housing and the subject lands are zoned for such use. This leads me to conclude that the planning authority have satisfactorily demonstrated that there is a housing need in the area. I am satisfied therefore, that there is a housing need in the area and the site is suitable for housing and conforms to all requirements of section 6(4) and 6(5) of the Act.

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-300842-18.

6.7. 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 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 James Crowley's land (Folio 42014). 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.

- 6.8. At the outset, I have advised the Board to note that the entire vacant site with the Council reference number VS-0017 is in multiple ownership and the landowner of a portion of the vacant site has made this appeal. The other landowners have not made section 9 appeals. 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-0017 is removed from the register. 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. I would also note that this 'site' comprises a number of sites with separate folios in separate ownership and arguably should not have been considered as one vacant 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 Ballyvoloon, 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 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,
- 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