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Bord  
Pleanála

## Inspector's Report ABP-301034-18

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<b>Type of Appeal</b>	Section 9 Appeal against section 7(3) Notice
<b>Location</b>	Killala Road, Townland of Kilmoremoy, Ballina, Co. Mayo.
<b>Planning Authority</b>	Mayo County Council
<b>Planning Authority VSL Reg. Ref.</b>	VSL BA 2
<b>Site Owner</b>	Fergal Burke & Thomas Carr
<b>Appellant</b>	Fergal Burke
<b>Date of Site Visit</b>	4 June 2018
<b>Inspector</b>	Una Crosse

## **1.0 Introduction**

- 1.1. This appeal refers to a section 7(3) notice issued by Mayo County Council, stating their intention to enter the site known as Killala Road, townland of Kilmoremoy, Ballina, Co. Mayo on to the Vacant Sites Register (VSR) in accordance with the provisions of section 6(2) of the Urban Regeneration and Housing Act 2015.
- 1.2. The appeal site has two owners with two folios within the site registered under VSL reference VSL BA 2. Folio MY39521 registered to Fergal Burke and folio MY32523 registered to Thomas Carr with the lands within each of the folios outlined in the maps submitted by the Planning Authority. This appeal is made by one of the owners Fergal Burke.

## **2.0 Site Location and Description**

Site is stated to have an area of 6 hectares and comprises an area of undulating ground which is partly disturbed and which is located adjacent to a number of existing housing developments. The Old Mill Stone estate on the Killala Road which is located to the west of the site, the Castlefield Manor development located to the north and the Woodlands development to the east. The site is adjoined to the south by one-off properties which address the public road. The site has frontage onto both the Killala Road (R314) to the west and a narrow cul-de-sac known as French Road to the east.

## **3.0 Statutory Context**

### **3.1. URH ACT**

- 3.1.1. While not specifically mentioned in the Notice issued the accompanying report has assessed the site on the basis of the tests outlined in Section 5(1)(a) of the Act which relate to residential lands.

### **3.2. Development Plan Policy**

3.2.1. The site is zoned residential Phase 1 in the Ballina Town and Environs Plan 2009-2015. The following is noted – Phase 1 lands shall also include residentially zoned lands that have been left in an incomplete and derelict condition as a result of former construction activity and because this could not conceivably revert back to agricultural/amenity use.

3.2.2. Objective RD17 of Ballina & Environs Development Plan 2009-2015

Objective RD17 states that it is an objective of the Council to encourage and facilitate the development of vacant and undeveloped residential lands through the use of all available tools and mechanisms, including the Vacant Site Levy, in order to support implementation of the Core Strategy and Settlement Strategy and the Interim Housing Strategy.

In this regard, residential lands where the Vacant Site Levy may be applied include:

1. All Phase 1 Residential lands in the Key Towns and
2. Any other residential zoned lands on which there is planning permission in respect of which substantial works have not been carried out within 3 years of the date of permission. These areas are shown on the maps titled "Residential and Regeneration Lands" which accompany the Area Plans (Map 8). These areas will be examined in detail to determine if there are sites where the Vacant Site Levy is applicable under the provisions of the Urban Housing and Regeneration Act 2015.

### **4.0 Planning History**

None.

### **5.0 Planning Authority Decision**

#### **5.1. Planning Authority Reports**

- A Draft Vacant Sites Assessment report was prepared which outlines the site, ownership and states that the majority of the undeveloped element of the lands is vacant and idle. It notes that the lands are zoned residential phase 1, the site is in

excess of 0.5 hectares in compliance with the Act. It is stated that the site is deemed to be suitable for inclusion on the register.

- Need for Housing – (a) core strategy outlines need for 593 new units; (b) house prices and cost of renting houses in the area (Mayo) is outlined (source – daft.ie); (c) number of households on the waiting list – 310; (d) % of houses available for purchase or rent is 2.2% with assessment of (a) – (d) indicating that there is a need for housing in the area;
- Suitable for Housing - (a) core strategy outlines need for 593 new units; (b) site is serviced with public water and sewer and within zoned area; (c) nothing affecting physical condition of the land with an extant permission with site deemed suitable for provision of housing;
- Section 5(1)(a)(iii) – site or majority is vacant and idle;

## 5.2. **Planning Authority Notice**

- 5.1. Planning Authority decided under section 7(3) to issue a notice on 1 February 2018 stating that the site has been entered onto the Vacant Sites Register as of 1 January 2018. The notice was issued to Mr. Fergal Burke & Mr. Thomas Carr.

## 6.0 **The Appeal**

### 6.1. **Grounds of Appeal**

An appeal has been submitted on behalf of one of the site owners (Fergal Burke) and is summarised as follows:

- Appellant owns northern portion of the lands (folio MY39521);
- A site must meet all the tests in Section 5(1)(a) – it is not an either/or list;
- Appellant wishes to develop lands for purposes other than housing over the course of the Development Plan with the relevant zoning permitting same and should not be penalised financially for choosing another development option for their lands;

- Register should be used for intended purposes and not to raise revenue in areas not in need of housing;
- Site fails to qualify as vacant site as defined as not, by any definition located in an area where there is a need for housing and therefore Section 5(a)(i) would not be met;
- Housing need determined by reference to Section 6(4) which includes 4 considerations which are examined in turn with each given equal weighing in the determination of housing need;
- Ballina identified as a linked hub with Table 1A from core strategy showing Ballina requiring 593 units to meet population targets from 2011-2020;
- Also shows an excess in housing provision in Ballina of c.635 units given that 1,228 units could be provided immediately with 799 vacant units, 52 unfinished housing estates and 377 permitted units;
- Highly questionable that PA has come to determination that the area is in need of housing when own housing strategy shows more vacant units in the area than the total number of units required to meet projected demand;
- While figures may be out of date they should be given due regard under Section 6(4)(a) of the Act but 2016 Census notes population decline of 238 persons between 2011 and 2016 (population target of 12,510 by 2020);
- Clear that at time of preparation of core strategy that there was an oversupply of houses in the area and since then there has been a fall in population levels in the area and concluded that housing need in Ballina has lessened and not unreasonable to infer that fall in population was unrelated to housing supply;
- Currently 121 properties for sale in Ballina on [www.daft.ie](http://www.daft.ie) with average price of properties €175,736 which is significantly behind average prices in the State (excluding main cities) which indicates a lack of housing demand or need in the area;
- In relation to social housing figures in Rebuilding Ireland, social housing assessments in same states that in 2013, 1,479 households qualified for social

housing support in Mayo decreasing to 1,242 in 2016 which is a 16% reduction contrasting with other areas of the Country;

- Census 2016 states that vacancy rate in Ballina in 2016 was 14.3% well above the 5% criteria set out in section 6(4)(d) with Census rate for Co. Mayo at 24%.
- Act clear that site can only considered vacant if it is in an area of housing need with evidence outlined above not supporting such a need;
- Site is not vacant or idle, is not ruinous or neglected or not accommodating anti-social behaviour or has not led to reduction in number of habitable houses;
- If site considered as regeneration lands there are no immediate development objectives for the lands, no special designations and area not in need of regeneration and lands do not have adverse effects on existing amenities or reduce amenity provided by public infrastructure;

## 6.2. **Planning Authority Response**

No response received.

## 7.0 **Assessment**

### 7.1. **Introduction**

The site has been included on the register having regard to its residential zoning with the assessment from the Planning Authority including an assessment of the criteria outlined in Section 6(4) as outlined above in Section 5. As I noted above, the appeal site has two owners with two folios within the site registered under VSL reference VSL BA 2. Folio MY39521 registered to Fergal Burke and folio MY32523 registered to Thomas Carr with the lands within each of the folios outlined in the maps submitted by the Planning Authority. This appeal is made by one of the owners Fergal Burke who owns the northern part of the site and arguably given the distinct site areas and owners this site should have in my opinion been addressed as two separate sites. However, given the method employed by the PA to assign one registration to both sites, the decision of the Board either to confirm or cancel shall relate to both folios.

## 7.2. Need for Housing in the Area

The appellants state that the site is not a vacant site as the site does not meet all the tests outlined in Section 5(1)(a) whereby the Act states that on Residential Land a site is a vacant site if:

*(i) the site is situated in an area in which there is a need for housing,*

*(ii) the site is suitable for housing, and*

*(iii) the site, or the majority of the site, is vacant or idle.*

In particular, the appellants state that the test regarding need for housing has not been met and that in this regard the site cannot be considered a vacant site as to be deemed suitable a site must meet each of the three tests.

As outlined by the appellant the need for housing in an area is to be determined by reference to section 6(4) of the Act which states:

*the housing strategy and the core strategy of the planning authority,*

*house prices and the cost of renting houses in the area,*

*(c) the number of households qualified for social housing support in accordance with section 20 of the Housing (Miscellaneous Provisions) Act 2009 that have specified the area as an area of choice for the receipt of such support and any changes to that number since the adoption of the planning authority's development plan, and*

*whether the number of habitable houses available for purchase or rent was less than 5 per cent of the total number of houses in the area.*

I will address each in turn having regard to the evidence presented by the Planning Authority in their assessment to support its inclusion on the register and the evidence presented in the appeal by the appellant.

### 7.2.1. The housing strategy and the core strategy of the planning authority

The first matter is the housing strategy and core strategy, of in this case, Mayo County Council. In the report appended to their assessment, the PA state, in relation to the core strategy, that the site is located on residential zoned land, that the population for Ballina in 2011 is 11086, that the population target for the plan period is 12,510, a projected increase of 1424 which requires an increase of housing units

of 593. They then reference the Interim housing strategy included as Variation No. 1 of the Current County Development Plan and which they state provides that it is estimated that 2,823 households will be in need of support in obtaining housing at the start of 2020. This appears to be a County wide figure.

The appellants outline that Ballina is identified as a linked hub in the Core Strategy with Table 1A from the core strategy showing that Ballina requires 593 units to meet population targets from 2011-2020. They also point out that Table 1A shows an excess in housing provision in Ballina of c.635 units given that 1,228 units could be provided immediately with 799 vacant units, 52 unfinished housing estates (I assume that is the figure of units within unfinished housing estates) and 377 permitted units. They state that it is highly questionable that the PA has come to determination that the area is in need of housing when their own housing strategy shows more vacant units in the area than the total number of units required to meet projected demand. They also acknowledge that while the figures may be out of date they should be given due regard under Section 6(4)(a) of the Act. I would however note that these appear to be the same figures used by the Planning Authority so I do not consider that the appellant's use of these figures is unreasonable. They further note that the 2016 Census notes a population decline of 238 persons between 2011 and 2016 (population target of 12,510 by 2020) in Ballina.

I would suggest to the Board that the housing strategy and core strategy would not indicate that there is a need for housing in this area that being Ballina, given the excess in housing stock both existing and permitted and the falling population identified in the most recent intersensal period.

#### **7.2.2. House prices and the cost of renting houses in the area**

The second matter in Section 6(4) is house prices and the cost of renting houses in the area. In the report appended by the PA to their assessment prior to placing the site on the register the data provided, sourced from [www.daft.ie](http://www.daft.ie) outlines rental and house prices for County Mayo sourced from Daft's Rental Price Report for Q1 of 2017 and the House Price Report for the same period. Values are also provided for quarters 3 & 4 of 2016 which indicate a quarter on quarter increase in both rent and house price costs. There are no details provided for Ballina.



The appellant states that there are currently 121 properties for sale in Ballina on [www.daft.ie](http://www.daft.ie). They also state that the average price of properties in Ballina is €175,736 which they state is significantly behind average prices in the State (excluding main cities) where the average house price according to the CSO was €277,837 for new houses and €207,253 for second hand properties which indicates a lack of housing demand or need in the area.

I have undertaken a search on the same website and found 129 properties for sale in Ballina with 8 properties to rent. Having regard to both the amount of available properties and the average cost when compared to those in the rest of the State I do not consider that it is reasonable to suggest that a housing need could be determined by reference to house prices and cost of renting.

#### **7.2.3. The number of households qualified for social housing support**

The third matter in Section 6(4) refers to the number of households qualified for social housing support. In the report appended by the PA to their assessment prior to placing the site on the register, the data is stated to be based on the data from the housing needs assessment carried out by Mayo County Council in 2016 where it is stated that the waiting list in September 2-16 showed a total of 310. The appellants state that in relation to social housing figures in Rebuilding Ireland, social housing assessments in some states that in 2013, 1,479 households qualified for social housing support in Mayo decreasing to 1,242 in 2016 which is a 16% reduction contrasting with other areas of the Country. I would note that the appellant does not have figures for the Ballina area and in this regard the figures from the Planning Authority would appear to indicate the requirement for 310 social housing units.

#### **7.2.4. Whether the number of habitable houses available for purchase or rent was less than 5 per cent of the total number of houses in the area**

The fourth matter in Section 6(4) refers to whether the number of habitable houses available for purchase or rent was less than 5 per cent of the total number of houses in the area. In the report appended by the PA to their assessment prior to placing the site on the register, the data is stated to be based on the data from the housing needs assessment carried out by Mayo County Council in 2016 where it is stated that within Ballina and its Environs that 124 units were available for sale and 18

available for rent and that this figure comprise 2.2% of the total housing stock of 6303.

The appellants in their appeal state that Census 2016 states that the vacancy rate in Ballina in 2016 was 14.3% well above the 5% criteria set out in section 6(4)(d) with Census rate for Co. Mayo at 24%. While the criteria in Section 6(4)(d) refers to properties available for purchase or rent which in this instance would refer more reasonably to the number available on the likes of daft rather than the number of vacant units, I would suggest to the Board that vacancy rate in the town referenced by the appellants at 14.3% would further indicate the absence of a housing need in the area.

### **7.3. Conclusion**

Having regard to the evidence presented by both the Planning Authority and the appellant, notwithstanding the number of households qualified for social housing support, one of the four determining considerations, having regard to the excess number of units in the town, the number of units for sale and house prices and rent costs in the area I do not consider that there is sufficient evidence to support a need for housing in Ballina and therefore the site would not meet the test set out in Section 5(1)(a)(i) and therefore would not satisfy the requirements Section 5(1)(a). I would also note that it is my opinion that this 'site' comprises two sites with two separate folios in separate ownership and arguably should not have been considered as one site.

### **8.0 Recommendation**

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 (VSL BA 2) at Killala Road, townland of Kilmoremoy, Ballina, Co. Mayo was vacant or idle for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 1<sup>st</sup> January 2018 shall be removed.

## 9.0 Reasons and Considerations

### 9.1. Having regard to

- (a) the information submitted to 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, and
- (d) the evidence outlined in relation to housing need in the area

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.

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Una Crosse

Senior Planning Inspector

June 2018