



An
Bord
Pleanála

Inspector's Report ABP-302329-18

Type of Appeal	Section 9 Appeal against section 7(3) Notice.
Location	Land to rear of Johnson and Perrott Car Showrooms, South Douglas Road, Cork.
Planning Authority	Cork City Council.
Planning Authority VSL Reg. Ref.	VS-0004.
Site Owner	Johnson and Perrott Limited.
Planning Authority Decision	Place on Register.
Date of Site Visit	12 November 2018.
Inspector	Stephen Rhys Thomas.

1.0 Introduction

- 1.1. This appeal refers to a section 7(3) notice issued by Cork City Council, stating their intention to enter a site at Land to rear of Johnson and Perrott car Showrooms, South Douglas Road, Cork on to the Vacant Sites Register (VSR) in accordance with the provisions of section 6(2) of the Urban Regeneration and Housing (URH) Act 2015. The notice states that the Planning Authority is of the opinion that the site is a vacant site within the meaning set out in Sections 5(1) and 5(2) of the URH Act 2015

2.0 Site Location and Description

- 2.1. The site is located at South Douglas Road, south of Cork city centre. The site is positioned north of the South Douglas Road opposite a petrol station and comprises a large agricultural field. The field rises up from the public road to meet the gardens associated with Ballincurragh Villa. For the most part the field boundaries are composed of planted hedgerow with concrete block walls to the South Douglas Road and the rear gardens of houses at Rathmore and Tramore Lawn. The agricultural field is in arable use; has been harvested of its crop and not yet ploughed or tilled.

3.0 Statutory Context

3.1. Urban Regeneration and Housing Act 2015 (as amended)

- 3.1.1. The Notice issued in relation to regeneration lands and the accompanying report has assessed the site on the basis of the tests outlined in Section 5(1) of the Act. The Notice is dated 18 July 2018 and is accompanied by a map outlining the extent of the site to which the Notice relates.
- 3.1.2. It is noted that the definition of vacant or idle has been amended by Section 63 of the Planning and Development (Amendment) Act 2018 which commenced upon coming into effect of the Act. This section of the Act amends Section 5 of the Act of 2015 by substituting Section 5(1)(a)(iii) for the following:

the site, or the majority of the site is—

(l) vacant or idle, or

(II) being used for a purpose that does not consist solely or primarily of the provision of housing or the development of the site for the purpose of such provision, provided that the most recent purchase of the site occurred—

(A) after it became residential land, and

(B) before, on or after the commencement of section 63 of the Planning and Development (Amendment) Act 2018.”.

3.2. Development Plan Policy

3.2.1. The site is zoned ZO 04 Residential, Local Services and Institutional Uses, objective – To protect and provide for residential uses, local services, institutional uses and civic uses, having regard to employment policies in Chapter 3 – Cork City Council Development Plan 2015-2021.

3.2.2. Variation 3 Vacant Sites

Promoting regeneration and redevelopment of vacant land.

Paragraph 2.30

Part of the development and regeneration strategy of the Plan is to engage in the active land management of vacant sites. This will promote and facilitate the rejuvenation of regeneration areas, increase housing supply and create more opportunity for employment. The Urban Regeneration and Housing Act 2015 introduced the vacant site levy initiative as a site activation measure to ensure that vacant and underutilised land in urban areas is brought into beneficial use, while also ensuring a more effective return on State investment in enabling infrastructure and helping to counter unsustainable urban sprawl. Action under the Urban Regeneration and Housing Act 2015 will be complemented by action taken to tackle dereliction under the Derelict Sites Act 1990.

Vacant Sites Register

The City Council will establish a vacant sites register for sites in excess of 0.05 hectares, (500sq.m.) in designated areas, effective from 01 January 2017. Where a site is on the register for a period of 12 months, the City Council may apply a levy at a rate of 3% of the market valuation of the vacant site.

The levy may be applied to all identified 'Regeneration' land and 'Residential' land in existing land use zonings of the City Plan.

"Residential" land is identified and applied to the following zonings:

Inner City Residential Neighbourhoods (ZO3 Land-use zoning objective)

Residential, Local Services and Institutional Uses (ZO 4)

Mixed Use Zoning Jacob's Island (ZO 20)

Regeneration of land and buildings in need of development and renewal throughout the city is a central objective of this Plan. In addition, 'Regeneration land' as defined under the 2015 Act is applied to the zoning objectives listed below

Objective 2.2: Regeneration and Renewal

Cork City Council will seek to develop and improve areas in need of development and renewal. In particular, the areas covered by the following zoning objectives are areas where the objective for regeneration and renewal will apply and are considered to constitute regeneration land.

Regeneration Land" is identified and applied to the following land-use zonings:

City Centre Retail Area, (ZO 1 Land-use zoning objective)

City Centre Commercial Core Area, (ZO 2)

Mixed Use Development, (ZO 16)

Light Industry and related Uses, (ZO 5)

Business & Technology, (ZO 7)

Retail Warehousing, (ZO 11)

District Centres, (ZO 8)

Neighbourhood Centres, (ZO 9)

Local Centres, (ZO 10)

Tivoli Local Area Plan lands (Objective 14.4 of Chapter 14)

Please refer to the specifics of each land uses zoning objective in Chapter 15 of the City Development Plan which should be read in association with the objective of active land management of vacant sites.

Objective 2.3 Active land management of vacant sites

Cork City Council will implement an Active Land Management Strategy in relation to vacant land in the City. A Vacant Sites Register will be established and maintained which will enable the City Council to pursue the efficient and sustainable use of the City's finite land resources.

4.0 Planning History

4.1. Subject Site:

None.

5.0 Planning Authority Decision

5.1. Planning Authority Reports

- A Vacant Sites report outlining the date of visit (30 November 2017), the site area, zoning and the type of site for the purposes of the Act which in this case is Residential. The site has an active agricultural use.
- The planning authority's submission is accompanied by the VSR listings, colour photographs and maps, a statement of need for housing in Cork City, a Notice served under section 8 of the Planning and Development Act 2000 (as amended), a Report on the Submissions received in relation to the establishment of the register, Inspection dates (9/7/18, 12/1/17, 31/1/2017 and 27/4/2018), a record of the chief executive's order, the initial submissions from the appellant in relation to the intention to place the site on the register.

5.2. Planning Authority Notice

Planning Authority decided under section 7(3) to issue a notice on 18 July 2018 referencing sections 5(1) and 5(2) of the Act and stating that the site has been entered onto the Vacant Sites Register. The notice was issued to Johnson and Perrott Limited, Mahon Point Retail Park, Mahon Point, Cork.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The landowner has submitted an appeal to the Board, against the decision of Cork City Council to place the subject site on the Register. The grounds of the appeal can be summarised as follows:

- Service of notice was defective. The section 7(1) Notice of proposed entry was served on Mark Whitaker c/o Johnson and Perrott Ltd, Douglas Road, Cork; not the registered owner. The appellant advised the Council that the site is in the ownership of Johnson and Perrott Ltd. This information was given to the Council on two occasions and a request to withdraw the Notice and re-issue was also submitted by the appellant. In addition, the Notice neglected to specify certain information such as the reasons for the proposed entry, that the site was not actually vacant, that the relevant section was not mentioned (section 5(1)(a)) with reference to residential lands and that the market value of the site was not advertised. The Council did not fully assess the site in terms of the entirety of section 5(1)(a) of the Act and as a result the section 7(3) notice is flawed.
- The appeal site is part of a wider land ownership parcel, which is for the most part in commercial use as a car dealership. The remainder of the site is in use for agricultural purposes and has been since purchase in 1917. The site is not vacant.
- The Council's assessments did not take account of all of 5(1)(a) and 6(4) and (5). The appellant presents figures that suggest that there is not a need for housing in the area (census data) and disputes the thrust of the core strategy and whether it targets the area for housing. The information regarding the cost of housing and renting in the area is queried and seen as unreliable. In terms of the suitability of the site for housing, the aim of the core strategy for the specific site is questioned, the site is predominantly commercial and so not suited for housing, new service connections will be required to bring the site forward for development, the presence of a Ballincurrig Villa (listed on the NIAH), archaeology and a landscape preservation zone cannot be discounted.
- The site (2 Hectares) forms part of a much larger landholding (4.75 Hectares) and so comprises a minority of the overall site. The greater portion of the site is in a car dealership commercial use.

- Most recent purchase of the site was in 1917, before it became residential land, the amended section 5(1)(a)(iii) applies.

The appeal is supported by the title deeds to the property dated 8 March 1917, Directors report Johnson and Perrot Limited noting the trade of farming, copies of correspondence to and from Cork City Council in respect of notices served.

6.2. Planning Authority Response

A response received from the Planning Authority to the grounds of appeal are summarised as follows:

- The subject lands are currently unregistered. Section 3 of the 2015 Act is referenced and the notifications were addressed to the reputed owner, specifically Johnson and Perrott were referenced and listed on all correspondence.
- The planning authority has set out all the relevant reasons and rationale for listing the site on the register in terms of section 6(4) and (5) of the Act.
- The site meets the requirements of the 2015 Act as of the 8 February 2018. Though the site is in use for agricultural purposes, the lands have been zoned residential since 2004 and that overrides the agricultural use.
- The 2015 Act does not specify when the assessment of a market value shall issue.
- There is not requirement to issue the full site assessment in relation to the criteria outlined in relation to section 6 of the Act, however, a full assessment in relation to the entirety of the Act was carried out by the planning authority.
- The land use associated with the car dealership is immaterial as that part of the landholding is not included within the site placed on the register.
- The lands have been zoned residential since 2004. With reference to the recent amendment of the 2015 Act in relation to the date of purchase of the lands. It is acknowledged that the lands have been in the same ownership since 1917, however, it is not clear when ownership transferred to the Johnson and Perrott Company.

6.3. Further Submissions

The appellant has reiterated and underlined the original grounds of appeal and referenced the procedures followed by Cork City Council in the service of the Notice and to affirm that the lands are not vacant. Of particular relevance is the confirmation of ownership insofar as the site was purchased in 1917 by William Perrott (who at the time owned Johnson and Perrott) and the site was bought out by Johnson and Perrott under deed dated 19 January 1973.

7.0 Assessment

7.1. Introduction

- 7.1.1. An appeal under the amended section 9 of the Act, requires that the burden of showing that the site was not a vacant site 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 a vacant site 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 City Council VSR on the 18 July 2018.
- 7.1.2. The Notice has been issued under the provisions of Section 5(1) and (2) of the Act. The assessment undertaken by the Planning Authority to inform the placement of the site on the Register, which I outline in section 5.1 above, refers to the tests included for residential lands under section 5(1)(a) and by reference to Section 6(4) and (5) of the Act as is required for lands zoned for residential purposes.
- 7.1.3. The main concerns of the appellant are that the Council have not properly served the section 7 notice as it was not addressed to the owner. In addition, the appellant states that the lands have been in the same ownership for many years and that the lands are in use for agricultural purposes. The parcel of land selected for the register is a smaller part of a larger landholding that is in commercial use as a car dealership and so the appeal site is a minority of the overall holding. There is not a need for housing in the area and the site is unsuitable for housing because of the heritage value of Ballincurrig Villa.

7.1.4. I would note that the appellant questions the suitability of the site for housing in the area. They reference the need for housing in the area, the vacancy/purpose of the lands and the validity of the notice, and in this regard, I propose to deal with all these matters.

7.2. **The Notice**

7.2.1. It would appear to me that the Council has made every effort to serve the notice on the appropriate landowner, by referring to both the personality of Mark Whittaker and the corporate entity of Johnson and Perrott. In fact, the section 7(3) Notice was served on Johnson and Perrott Limited, Mahon Point Retail Park, Mahon Point, Cork. This was after receiving advice from the appellant dated 21 June 2018 that Johnson and Perrott Limited was the owner and have been for almost 50 years. The result of which has been that an appeal has been made and the placement of the site on the register challenged. In very broad terms the notice has served its purpose and the application of the levy, if applied at all, may be subject to further challenge. If the matter of ownership is in question then it is for the Council to recommence the process of placing the site on the register from the start once title is confirmed if that is necessary. No further action is warranted with regard to this appeal now before the Board.

7.3. **Agricultural Use**

7.3.1. Section 63 of the Planning and Development (Amendment) Act, 2018 provides a revised definition of Section 5(1)(a)(iii) of the Act with a new subsection included and the revised section 5(1)(a) reads as follows:

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

(ii) the site is suitable for the provision of housing, and

(iii) the site, or the majority of the site is—

(I) vacant or idle, or

(II) being used for a purpose that does not consist solely or primarily of the provision of housing or the development of the site for the purpose of such provision, provided that the most recent purchase of the site occurred—

(A) after it became residential land, and

(B) before, on or after the commencement of section 63 of the Planning and Development (Amendment) Act 2018.

7.3.2. The appellant has stated that the lands in question have been in use for agricultural purposes. I agree and based upon my observations of the site it is in arable use at present. This is important because recent amendments to section 5 of the 2015 Act, and advice provided by Circular PL 06/2018 require the use of the lands for other purposes, such as farming, to be exempt from the levy dependant on when any change of ownership occurred and when the land was zoned for residential purposes. I note that the appellant states that the lands were originally purchased in 1917 by William Perrott and the site was bought out by Johnson and Perrott under deed dated 19 January 1973. According to the planning authority the lands were first zoned residential in the Cork City Development Plan in 2004. The lands were therefore transferred from one owner to another in 1973, before the lands came to be residentially zoned. The subject lands continue to be used for agricultural use and accordingly, the site is exempt from the levy. However, I intend to address all the grounds of appeal in the following sections.

7.3.3. In relation to the extent of the site outlined for inclusion on the register, I note that the planning authority excluded the commercial premises and residential properties to the north. In my view, the appeal site before the Board is a complete site in single ownership, matters referring to an overall landholding are irrelevant and have no place in the assessment of the vacant site outlined and shown on maps by the planning authority.

7.4. Housing need and suitability of the site for housing

7.4.1. The appellant takes the view that the core strategy of the Development Plan fails to specify the South Douglas Road as an area in need of housing. In addition, the appellant makes the point that the population has grown only marginally and that there are few houses for sale and none for rent in the area. They point at a lack of data for householders qualified for social housing support and conclude that there is not a need for housing and that the council failed to assess the site in the context of section 6(4) of the Act. I can see that the Council have assessed the site in context of section 6(4) of the Act and have submitted sufficient information in this regard. In my own view, the fact that there are few houses for sale and none for rent, illustrates

that there is a need for housing in this area. The core strategy of the development plan sets out to quantify the need for housing and zone land accordingly. This, the Council have done and I am satisfied that there is a need for housing at this location.

- 7.4.2. The appellant also highlights the lack of service infrastructure connections in the area and the sensitivity of the overall landholding in terms of Ballincurrig Villa and the Car Dealership premises. I note the response of the planning authority and I can see no obvious obstacles to the development of this site for residential uses. On balance and on the basis of the information before the Board there appears to be a need for housing within this area and the site is suitable for housing, all in accordance with section 5(1)(a)(i) and (ii) of the 2015 Act.

8.0 Recommendation

- 8.1. I recommend that in accordance with section 9(5) of the Urban Regeneration and Housing Act 2015 (as amended), the Board should cancel the site at land to the rear of Johnson and Perrott Car Showrooms, South Douglas Road, Cork, that was not a vacant site for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 18 July 2018 shall be removed.

9.0 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 Planning Inspector,
- (d) The evidence to suggest that the site is being used for agricultural purposes and
- (e) That while the site is being used for a purpose that does not consist solely or primarily of the provision of housing or the development of the site for the purpose of such provision, the most recent purchase of the site occurred before it became residential land, and before, on or after the commencement of section 63 of the Planning and Development (Amendment) Act 2018,

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

17 December 2018