



An
Bord
Pleanála

Inspector's Report ABP-302332-18

Type of Appeal	Section 11(4) Appeal against a notice under section 11(1).
Location	Ballycarnane, Tramore, Co Waterford.
Planning Authority	Waterford City and County Council.
Planning Authority VSL Reg. Ref.	48.
Site Owner	Michael Vincent Morrissey.
Date of Site Visit	9 January 2019.
Inspector	Stephen Rhys Thomas.

1.0 Introduction

- 1.1. This appeal refers to a section 11(3) notice issued by Waterford City and County Council, stating that the site stands entered on the Vacant Sites Register and Levy to be charged on the site at Ballycarnane, Tramore, Co Waterford in accordance with the provisions of section 11(1)(a) of the Urban Regeneration and Housing Act 2015 as amended.

2.0 Site Location and Description

- 2.1. The subject site is located towards the centre of Tramore in County Waterford. The lands are located to the rear of a number of housing estates and private residences, but can be accessed from a new road.
- 2.2. The subject lands comprise agricultural fields laid out in grass and divided by electric stock fencing. The boundaries to residential property is a combination of existing hedgerows or concrete block walls.

3.0 Statutory Context

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

- 3.1.1. The Notice issued in relation to section 11(1) of the of the 2015 Act, as amended.

3.2. Development Plan Policy

- 3.2.1. The **Tramore Local Area Plan 2014-2020**, is the operative local planning framework document for the area. The site is located on lands subject to zoning objective – Strategic Residential Reserve.

The **Waterford County Development Plan 2011-2017** is the operative development plan. With regards to the Urban Regeneration and Housing Act 2015, variation 3a of Waterford County Development Plan 2011-2017 states the following:

To be included in Chapter 3 Core Strategy immediately after Section 3.6 Urban Settlement Hierarchy.

3.6a Urban Regeneration

The Urban Regeneration and Housing Act 2015 introduced a vacant site levy in order to incentivise the development of vacant sites in urban areas for housing and

regeneration purposes. The application of the levy is intended to bring underutilised and vacant sites and buildings in urban areas into beneficial use.

Waterford City & County Council will examine lands within the towns and villages, as appropriate, for the purposes as set out in the Urban Regeneration and Housing Act 2015 in relation to the vacant site levy.

It is an objective of this Plan to promote the appropriate development and renewal of urban sites and areas, identified having regard to the core strategy, that are in need of regeneration, in order to ensure there is no -

- (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) shortage of habitable houses or of land suitable for residential use or a mixture of residential and other uses.

4.0 Planning History

4.1. Subject Site

4.1.1. None.

5.0 Planning Authority Decision

5.1. Planning Authority Reports

- 5.1.1. **Register of Vacant Sites Report:** Site is zoned 'New Residential – Phase 2', the site is identified as residential. The site is suitable for inclusion on the VSR. The report is accompanied by a location map and colour photographs. The report includes a detailed criteria to be assessed for suitability for the VSR, the section 7(1) and 7(3) notice (dated 27 July 2017), the landowner's submission to the planning authority, the Chief Executives Order and the report on the final site selection for the VSR.

5.1.2. **Response to Submission Report** – The complete report includes 29 sites. The site is in use for agriculture, but not in a use for which the site was zoned. Circular PL 7/2016 sets out the requirements for site assessment, which the Council has followed. The site was not zoned for residential purposes in 1987 and it is likely that the new planning amendment bill will impact on the status of the site and its place on the register.

5.2. **Planning Authority Notice**

Waterford City and County Council advised the site owner that the subject site (Planning Authority site ref. 48) stands on the Vacant Sites Register. The notice, issued pursuant to section 11 of the Act and dated 31 July 2018, stated that particulars of the site remain entered on the Vacant Sites Register and that a Levy is to be charged. In accordance with section 11(3) of the 2015 Act, the Council advised the site owner that the site will not be cancelled.

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 Waterford City and County Council to enter the subject site on the Register. The grounds of the appeal can be summarised as follows:

- The appellant states that they are the owner of the site and supplied a Folio number.
- The appellant is satisfied that his lands should be considered as residential lands for the purpose of the 2015 Act.
- The planning authority's approach to the site assessment is challenged, in particular, the site visit date is blank, no rationale is given for placing the site on the register, no proper consideration was given to the appellant's submissions to the Council.
- The appellant notes that there may well be a need for housing and that the site is suitable for housing, but the lands are neither vacant or idle as the lands are in use for agriculture. The appellant has been farming the land since at least 1971 and before that his uncle farmed the lands. The farm was

registered to the appellant in 1987 and milk production ceased in 1999, but the property is still used for cattle production.

- The appellant is unhappy about the entire process of the Vacant Site Register and the URH Act 2015, legal cases are cited and constitutional rights as a property owner are raised.

The appeal is accompanied by various Department of Agriculture, Food and Marine documentation, payments, entitlements and maps.

6.2. Planning Authority Response

6.2.1. The Planning Authority responded to the appeal, requesting that the following observations be noted by the Board:

- When the site was assessed, it was deemed to meet the requirements of the 2015 Act, and the decision was reached on an evidenced based and fair basis.
- The planning authority note the new provisions of the 2018 Planning and Development Amendment Act and would welcome the Board's decision as to the status of the site.
- The underlying methodology for site selection has been forwarded to ABP and the planning authority will accept any determination with regard to the site and VSR.

7.0 Assessment

7.1. Introduction

7.1.1. An appeal under section 11 of the Act, requires that the burden of showing that the site is no longer a vacant site is on the owner of the site. Section 11(5) of the Act states that the Board shall determine whether the site was no longer a vacant site. The subject site stands entered on the Waterford City and County Council VSR, dated 27 July 2017.

7.1.2. The purpose of a section 11 appeal is to determine if a site is no longer a vacant site. It therefore follows, that the original reasons and considerations for the placement of the site on the register are not subject to the appeal. Consequently, on the whole my assessment is limited to the tests for a vacant site outlined by the 2015 Act, for the

time period between the date of entry on the register and the date of the relevant notice.

- 7.1.3. By reference to the planning authority notice, it is stated that the subject site is entered on the Vacant Sites Register and a Levy is to be charged. The subject site is located in an area zoned objective Strategic Residential Reserve. The County Development Plan provides overarching policies and objectives. Section 3.6a *Urban Regeneration* of the Development Plan states that the vacant site levy applies to lands suitable for housing and regeneration purposes. Given that residential use is the predominant use, the site is considered residential lands for the purposes of the 2015 Act, this assessment takes into account the characteristics of the site in the context of section 5(1)(a) of the Act, residential land.
- 7.1.4. The appellant states that the site should be removed from the register because the lands are in full time agricultural use and therefore not vacant or idle.
- 7.1.5. In the interests of clarity, section 11(1) of the 2015 Act, instructs the planning authority to give written notice to the owner of any site that stands entered on the register, outlining the following:

(a) stating that the site stands entered on the register,

(b) setting out such matters as are entered in the register in respect of the site,

(c) stating that there shall be charged and levied for each year beginning with 2018 in respect of each vacant site in relation to which a market value has been determined and that stands entered on the register a levy in accordance with section 15, and

(d) informing the owner that he or she may make submissions in respect of the entry to the planning authority in writing within 28 days after the date of such notice.

The Notice shall be issued no later than the 1 November 2018, S.I. No. 374 of 2018 and dated 25 September 2018 refers, notice was issued on the 31 July 2018. The land owner can appeal the decision of the planning authority, sections 11(4) and (5), state the following:

(4) On an appeal under this section the burden of showing that the site, or a majority of the site, is no longer a vacant site shall be on the owner of the site.

(5) Where the Board determines that a site is no longer a vacant site it shall give written notice to the planning authority who shall cancel the entry on the register in respect of that site.

Thus, the purpose of a section 11 appeal is to determine if the status of the site in question, is still a vacant site or is no longer a vacant site.

7.1.6. In this instance, the notice was issued by the planning authority on the 31 July 2018, which is later than the 1 June 2018 deadline set out in the original 2015 Act but not later than the 1 November 2018 deadline set by S.I. No. 374 of 2018. I am satisfied that the planning authority issued the relevant notices in a valid and timely manner and in accordance with the 2015 Act.

7.2. Vacant/Idle - Agricultural Use

7.2.1. The appellant has stated that the lands are in full time agricultural use and has provided information from the Department of Agriculture. From my observations of the subject lands, I agree that the site is in use for agricultural purposes. This is an important consideration because the Planning and Development (Amendment) Act 2018 enacted 19 July 2018, clarifies how the use of residentially zoned land is treated with regard to the timing of land ownership and defining the use of the lands in question. Section 5(1)(a)(iii) 2015 Act now states:

(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.”.

7.2.2. This amendment is further addressed by circular letter PL 06/2018 dated 3 October 2018, that advises 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, as follows:

These sections also clarify what constitutes “vacant or idle” lands for the purposes of the application of the levy on “residential land” in order to address the situation where – under the pre-existing provisions – developers, or land speculators, could potentially hoard residentially zoned land and avoid liability to the levy, by leasing it or putting it to use for a non-residential purpose, such as farming, and thereby claim that the land in question was not vacant or idle for the purposes of the levy. This will now no longer be possible; with one exception i.e. land which was purchased for agricultural use prior to being zoned residential and which continues to be operated for farming purposes shall be exempt from the levy.

- 7.2.3. The appellant has stated that they have farmed the land for a number of years and received farm payments from the Department of Agriculture, the lands were registered in their name 1987. The documentary evidence is extensive and the planning authority agree that the lands have most likely been farmed and owned by the same person for a long period of time and certainly before the land was zoned for residential purposes.
- 7.2.4. I note that the period for which the lands are to be assessed straddles the enactment of the Planning and Development (Amendment) Act 2018. The Board shall determine whether the site was no longer a vacant site since it was entered on the Waterford City and County Council VSR, dated 27 July 2017. This may have relevance in determining which version of the 2015 Act to interpret. In my view, as a section 11 appeal is concerned with the more recent condition of the lands since they were entered on the register, it is appropriate to apply the amended 2015 Act, insofar as it clarifies the use of residentially zoned land.
- 7.2.5. I am satisfied that the appellant has farmed the land since before it was zoned for residential purposes. Irrespective of the advice provided by the circular letter, I would agree that the lands are neither vacant or idle as they are in use for agricultural purposes. I reached this conclusion based upon the evidence provided by the appellant and my observations of the condition of the lands, being in grass and divided by electric stock fence. As the lands, the subject of the appeal are plainly in use for a purpose, and that purpose is agricultural, the lands should be removed from the register.

7.3. Housing Need and Site Suitability for Housing

- 7.3.1. The need for housing in the area or that the site is suitable for the provision of housing is not disputed by the applicant. The site is zoned residential and as stated by the planning authority, there is a need for housing in the area. In addition, the site is suitable for the provision of housing as evidenced by the provision of housing on surrounding lands and residential land use zoning of the subject site. I am satisfied that the subject site is suitable for housing and that there is a need for housing in the area but the site is not vacant or idle and is therefore not a vacant site in full accordance with the entirety of section 5(1)(a) of the 2015 Act as amended.

7.4. Other Issues

- 7.4.1. The appellant has raised a large number of wide ranging criticisms of the 2015 Act, their constitutional rights as a landowner and the procedures employed by the planning authority to implement the 2015 Act. I am satisfied that the planning authority have set out a robust approach to the implementation of the VSR, each step is documented and appropriate dates are provided. I do not intend to address any of these issues in my assessment, as it is unnecessary and not central to the appeal in hand.

8.0 Recommendation

- 8.1. I recommend that in accordance with section 11(5) of the Urban Regeneration and Housing Act 2015 (as amended), the Board should give written notice to the planning authority that states the site should not stand on the register in respect of the lands at Ballycarnane, Tramore, Co Waterford, as the site was not a vacant site. Therefore, the entry on the Vacant Sites Register on the 27 July 2017 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 site that stands entered on the Vacant Sites Register,
- (b) The grounds of appeal submitted by the appellant,
- (c) The report of the Planning Inspector,

- (d) The condition of the site, being that in use 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 remove the site from the Vacant Sites Register.

Stephen Rhys Thomas
Planning Inspector

28 January 2019