



An  
Bord  
Pleanála

## Inspector's Report ABP-302355-18

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<b>Type of Appeal</b>	Section 9 Appeal against section 7(3) Notice.
<b>Location</b>	Site at Farranferris Grounds, Redemption Road, Blackpool, Cork.
<b>Planning Authority</b>	Cork City Council.
<b>Planning Authority VSL Reg. Ref.</b>	VS-0010.
<b>Site Owner</b>	The Cork Diocesan Trustees.
<b>Planning Authority Decision</b>	Place on Register.
<b>Date of Site Visit</b>	12 November 2018.
<b>Inspector</b>	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 Farranferris Grounds, Redemption Road, Blackpool, 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 off Redemption Road/Lover's Walk in the north Cork city suburb of Blackpool. The site is large and comprises much of the grounds around the former school and seminary, now an adult training centre and primary school.
- 2.2. The subject site takes in much of the amenity lands around the facility and includes areas of productive gardens, playground, playing fields and a large proportion of overgrown areas. The site backs onto housing at Farranferris Park and Seminary Place to the north.

## 3.0 Statutory Context

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

- 3.1.1. The Notice issued in relation to residential lands and the accompanying report has assessed the site on the basis of the tests outlined in Section 5(1)(a) of the Act. The Notice is dated 23 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—*

*(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.”*

### **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. The site is the subject of an Area of High Landscape Value, the objective of which states:

To conserve and enhance the character and visual amenity of Areas of High Landscape Value (AHLV) through the appropriate management of development, in order to retain the existing characteristics of the landscape, and its primary landscape assets. Development will be considered only where it safeguards to the value and sensitivity of the particular landscape. There will be a presumption against development where it causes significant harm or injury to the intrinsic character of the Area of High Landscape Value and its primary landscape assets, the visual amenity of the landscape; protected views; breaks the existing ridge silhouette; the character and setting of buildings, structures and landmarks; and the ecological and habitat value of the landscape.

3.2.3. In the immediate vicinity of the site and related to the context of the wider area there are also Landscape Preservation Zones (Farranferris College Ridge), Public Open Space and Sports Grounds objectives.

3.2.4. 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

- 3.2.5. 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:

PA reference **11/34953** - 10 Year planning permission for mixed use development to include an education, training campus 90 no. residential units.

## 5.0 Planning Authority Decision

### 5.1. Planning Authority Reports

- A Vacant Sites report outlining the date of visit (1 December 2017), the site area, planning history, zoning and the type of site for the purposes of the Act which in this case is Residential. The lands adjacent to the former seminary are vacant.
- The planning authority's submission is accompanied by the VSR listings, colour photographs and maps, the initial submissions from the appellant in relation of 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 23 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.

## 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:

- The site is not suitable for housing, because a freehold interest could not be acquired over the entire site. This has delayed the construction of any houses. The title is now in order, but it was not so during the relevant 12 month period.
- The site is not vacant or idle, it is in use as a school and educational resource for children and adults. Much of the site is given over to vegetable gardens and is in use by adults and children. The appellant highlights the inconsistencies throughout the Act, the meaning of the Act and the guidance provided by circular letter.
- The site is not suitable for housing as it is not served by public infrastructure, significant works are required to service the site.

- The landowner has taken a number of administrative steps to develop the lands, such as obtaining planning permission (2011), acquiring freehold interest of the lands and engaging with Cork City Council in relation to removing infrastructural obstacles.

The appeal is supported by the Notice of entry on the register, the response submission prepared by the appellant, a further response, correspondence from Cork City Council with regard to the entry of the site on the register, an engineering services report, copy of lease and a County Registrar Order dated April 2018.

## **6.2. Planning Authority Response**

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

- The areas of the overall site that are currently in use in connection with the school and training centre do not form part of the outline of the vacant site. The area referred to as a sports pitch is not laid out as such and is considered to be vacant.
- The works required to service the development will be paid for and solely benefit the developer, section 6(5)(b) of the Act does not apply.

## **6.3. Further Submissions**

The appellant has responded as follows:

- The works required to service the site will benefit development sites elsewhere, not just the subject lands at Farranferris.
- A good and marketable title to land is essential to secure finance and develop land. Because the remaining lease amounted to less than 70 years, as recommended by the Law Society Guidelines with respect to residential lending, the site was not marketable.
- The walkways and demonstration areas do fall within the areas outlined on the site boundary drawn up by the Council and therefore these lands are in use, not vacant.

- The background to the establishment of the Farranferris Foundation (under the auspices of the Cork Diocesan Trustees) as developer of the lands is further reiterated.
- The submission is supported by a copy of the Law Society of Ireland – Residential Mortgage Lending guidelines, an A3 map outlining various boundaries within the site, an Application to Purchase Freehold, various OS maps and a lease map and a copy of the Memorandum and Articles of Association of Farranferris Foundation.



## 7.0 Assessment

### 7.1. Introduction

- 7.1.1. An appeal under 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 23 July 2018.
- 7.1.2. The Notice has been issued under the provisions of Section 5(1)(a) of the Act which relates to residential lands. The assessment undertaken by the Planning Authority to inform the placing 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 site is not suitable for housing because of the lack of services. There has been a delay in bringing the site to construction because of freehold title issues. The site has planning permission and the site is in use for training and education purposes. The Council maintain that the entire site is not in use and it is those areas that are included on the register. There are no service deficiencies in the area and the provision of infrastructure by the developer will serve the site alone.
- 7.1.4. 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—*
    - (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.*

7.2. I would note that the appellants do not question the need for housing in the area and therefore I do not intend to address this matter. In addition, the appellant highlights the administrative works that have been ongoing to achieve a good and marketable title to the site and the granting of planning permission for a mixed use and residential development. In the matter of title, this has relevance in the charging of the levy and not necessarily with the condition of the site. Finally, the Act is clear: the test for inclusion is the past condition of the site from the date of entry on the Register. I refer to Circular Letter PL7/2016, Appendix 3, that states:

*Where a vacant site has an extant planning permission associated with it, this should not be a consideration in determining whether to apply the levy. If such a site meets the criteria for a vacant site in respect of either residential or regeneration land, then the levy may be applied.*

7.2.1. The appeal and my assessment below will address points (ii) and (iii) that being the suitability of the site for the provision of housing and the site being vacant or idle/purpose of the land. I would however note that in order to comply with Section 5(1)(a) that a site must meet all of the three sections.

### 7.3. **Suitability for housing**

7.3.1. The appellants state in their appeal that the site is not suitable for the provision of housing they raise a number of issues regarding the serving of the site in the context of section 6(5)(b) of the Act. The tests to determine suitability for the provision of housing are set out in Section 6(5) of the Act as follows:

*(a) The core strategy,*

*(b) Whether the site was served by the public infrastructure and facilities (within the meaning of section 48 of the Act of 2000) necessary to enable housing to be provided and serviced, and*

*(c) Whether there was any thing affecting the physical condition of the land comprising the site which might affect the provision of housing.*

7.3.2. The appellants do not address the core strategy nor do they reference any thing affecting the physical condition of the land comprising the site which might affect the provision of housing. They do reference the provision of public infrastructure and facilities as they relate to water services and have submitted an engineer's report to outline what is required. The planning authority are of the opinion that the site can be serviced and that the works required would benefit the site alone.

7.3.3. I note that there is an extant permission for a mixed use development that includes 90 residential units, pa reference 11/34953 refers. The development was granted permission subject to standard conditions and would not have been permitted if there were an existing deficiency in the provision of water supplies or sewerage facilities. I am satisfied that the site can be adequately serviced and that any works required to be undertaken would have had to have been done by the developer in any case. In my mind the site is suitable for housing as demonstrated by the land use zoning and an extant planning permission.

#### **7.4. Vacant or Idle and Purpose of the Lands**

7.4.1. In relation to the vacancy or otherwise of the site or part thereof, there are a number of considerations. Firstly, Section 5(1)(a)(iii) has been amended by Section 63 of the Planning and Development (Amendment) Act, 2018 which provides that 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.”*

- 7.4.2. It is apparent from the documentation on file that the appellant has been located on these lands and lands hereabouts since at least 1788, with the establishment of the college and later seminary. I am satisfied that the lands have been owned by the appellant for some time and that the matter of lease and title are not relevant because the 2015 Act, specifically mentions the most recent purchase, not lease. The site would have been zoned for residential purposes following their becoming owners of the site and before the commencement of Section 63 of the 2018 Act. In this regard the site does not meet the tests outlined in Section 5(1)(a)(iii)(II) and the Notice should be cancelled. However, notwithstanding the foregoing, for the Boards information I will also address the other matters raised in the appeal as they relate to part 5(1)(a)(iii)(I).
- 7.4.3. The appellant makes the point that all the lands around the facility are in constant use as play areas, learning and participation spaces and for recreation. Whilst this may be true for a certain proportion of the site that contain vegetable gardens, and structured play areas, there is a considerable area of the site that seems to perform no practical use. The majority of the site comprises lands that are in grass, mostly overgrown and not maintained. The planning authority highlight these areas as vacant and do not accept that they are in use by the educational facilities currently on site. I would tend to agree with the planning authority. For me, the unkempt condition of the lands and their landscape character suggests inactivity and lack of use. In particular, the lower playing pitch (not included on the register) may be in use, the upper pitch appears overgrown and unused for some time. Should the use of these lands revert to active recreational and sporting use, then the onus is on the landowner to inform the Council and seek removal from the register under section 10 of the Act. I am satisfied that the site is a vacant site and in accordance with section 5(1)(a)(iii)(I) of the Act.
- 7.5. The site is zoned residential and this suggests there is a need for housing in the area. The site is suitable for the provision of housing as evidenced by the residential land use zoning and an extant planning permission. Finally, the site is a vacant site as indicated by its unused condition and overgrown nature. Given the foregoing, I conclude that the site is a vacant site in accordance with section 5(1)(a), 6(4) and

(6)(5) of the 2015 Act as amended. I am satisfied that the entry of the subject site on the Vacant Sites Register of Cork City Council should be confirmed.

## 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 confirm the entry on the register of site (VS-0010) was a vacant site for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 23 July 2018 shall be deemed to take effect from that date.

## 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 and
- (d) That the site was a vacant site by virtue of the unkempt and unused condition of the lands, the need for housing in the area, the site is suitable for the provision of housing as demonstrated by the residential land use zoning for the area and an extant planning permission for a mixed use and residential development, and that insufficient reason is put forward to cancel entry on the Vacant Sites Register

the Board is satisfied that the site was a vacant site for the relevant period.

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Stephen Rhys Thomas  
Planning Inspector

20 December 2018