



An
Bord
Pleanála

Inspector's Report ABP-302427-18

Type of Appeal	Section 11(4) Appeal against a notice under section 11(1).
Location	Lands at Carrickphierish Road, Gracedieu, Waterford.
Planning Authority	Waterford City and County Council.
Planning Authority VSL Reg. Ref.	Plot No. 15.
Site Owner	William Neville and Sons Construction.
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 Lands at Carrickphierish Road, Gracedieu, 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 along the Carrickphierish Road, a relatively new road that provides a link from the north part of Waterford City to the R170 inner link road. The site comprises a large area of disturbed land and scrub sloping upwards from the new road. The site can also be accessed from Woodbrook, a housing estate to the north. The site is large, overgrown and characterised by heaps of topsoil and other redundant articles of debris from the initial phases of construction activity in the area.

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 **Waterford City Development Plan 2013 – 2019** is the operative development plan. The site is located on lands that are subject to zoning objective – ‘Developed Residential’. Section 7.3.1 North West Suburbs Carrickphierish/Gracedieu provides broad objectives for the area.

Section 2.6a Urban Regeneration, states:

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 City, 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.

Section 2.2.1 Housing Land Requirement for the Plan Period.

A population increase of 5,018 persons is envisaged for the new Plan period, which in turn translates into a housing requirement of 1,930 units, using an average household size of 2.6 persons. At an average density of 20 residential units to the hectare, this gives a requirement for 96.5 hectares of residential zoned land. The RPG's again indicate that provision should be made for a level of over zoning when determining housing zoning requirements. Applying a 50% overzoning to the 96.5 ha equates to 144.75 ha, however over zoning can be up to 150% which would equate to 241.25 ha. Utilisation of the maximum or near maximum over zoning provision is considered justified for Waterford City given its Gateway status, subsequent growth expectations and noting that the RPG targets are minimum targets for the Gateway. Notwithstanding the 241.25 ha of residential zoning permissible for the new Plan period, current levels of undeveloped residential zoned land in the City, exceed this figure, amounting to 353 ha of land as of February 2012.

In order to deal with the excess of residentially zoned land and to account for lands where there are existing service deficiencies, it is appropriate to apply a phasing to the development of these lands in the Development Plan. The proposed level of undeveloped housing land provision and associated phasing is set out in Section 2.2.3 and Table 2.3. Housing land comprises lands zoned for residential uses, and those zoned for a mix of residential and other uses, such as mixed use/opportunity sites.

4.0 Planning History

4.1. Subject Site

- 4.1.1. Planning authority reference number **17623** – Extension of duration of 06/313 for a residential development comprising 81 No. two storey houses, semi-detached, detached and terraced, 3 No. 3 storey terraced Duplex Units (6 units total) 1 No. two storey semi-detached Creche. 18 No. 3 storey Duplex Blocks comprising 8 units (144 units total) access roads, services and site development works.
- 4.1.2. There are other residential planning permissions that relate to lands in the vicinity of the site.

5.0 Planning Authority Decision

5.1. Planning Authority Reports

- 5.1.1. **Register of Vacant Sites Report:** Site is zoned 'Existing Residential', 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. Planning history: 06/500313 permission for 144 residential units, commenced some completed. Site visit 27 January 2017. There is a housing need, the site is suitable for housing, new WwTP, schools and library in place. 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 ongoing works in the area at Mount Suir relate to the completion of previously commenced units and not included on the site as outlined. An intention to develop the site whilst welcome, does not preclude the inclusion of the site 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. 15) 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 the City Development Plan fails to calculate the lands zoned 'developed residential' into meeting the needs of the Core Strategy or Housing Strategy.
- The appellant states that the site fails to meet all of the tests for section 6(4) of the 2015 Act as follows:
 - a) lands zoned developed residential fall outside the calculations for projected housing need in the Core Strategy of the CDP and the Housing Strategy, so there is not a need for housing;
 - b) in terms of house prices/cost of renting, the average house sale in the area is €119,000, less than the average of €172,880 for the rest of Waterford City, the average rental is €921 compared to the national average of €1,034, houses cost more to construct compared to their sale value;
 - c) social housing, the appellant has made several serious attempts to provide social housing but the lack of response from the local authority shows a lack of need for such housing;
 - d) 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 vacancy rate in Waterford City and Environs is 10.6% (census 2016). Which is more than double the rate of 5%.
- The Market rate is required by the 2015 Act to be shown under section 11(1) of the Act, it has not, the notice is legally flawed.

- The site is an active site, with 3 units completed in July 2018 and an apartment scheme (under 05/419) is being constructed. The planning authority have selected a site that excludes these working sites.

The appeal is supported by the section 11(1) Notice, the response to the Notice, section 11(3) Notice, PA report on the subject site, PA invitation for expressions of interest, the appellant's cover letter and layout concerning the expression of interest.

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 lands are residentially zoned and are serviced by recently installed infrastructure.
- Houses prices have risen nationally and locally the number of houses for sale or rent in Waterford have reduced increasing pressure on supply.
- Matters have not changed on the site since it was placed on the register and that site should therefore remain on the register.
- 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.

6.3. Further Responses

- The PA have failed to submit any new evidence to retain the site on the register.
- On foot of permission 06/313, three new houses have been completed on the site.

- Other residential units are being actively completed in the area including apartments under 05/419 and 10 houses under 02/389.
- The appellant goes on to reiterate the previous grounds of appeal.

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 Developed Residential. The 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 Notice should have detailed the Market Value of the site, no such value has been entered on the Notice, it is therefore legally flawed.
- 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. In addition, the 2015 Act does not specify the content of any section 11 Notice and does not stipulate that the Market Value shall be shown on same. Section 11(1)(c) simply states that a written notice shall issue and a levy shall be charged in respect of each vacant site in relation to which a market value has been determined and that stands entered on the register. I am satisfied that the Notice contains the relevant information for the purposes of the 2015 Act.

7.2. Vacant/Idle

- 7.2.1. The appellant has stated that the overall lands are subject to the ongoing construction of dwellings and that a duration of a permission has been extended for development of the entire site. The planning authority highlight that the construction works that are ongoing relate to lands outside the site outlined on the register. The appellant is unhappy about this too, and criticises the planning authority for selectively drawing the site boundary to purposely exclude ongoing development.
- 7.2.2. Firstly, the Board have no role in re-drawing boundaries in relation to vacant sites and I am satisfied that the subject site is logical and consigned to a single landowner. Secondly, I detected no obvious signs of construction activity on the site or evidence of recent works. I did observe limited scale construction activity taking place at apartments at Mount Suir Manor, but this does not form part of the site on the register. The appellant has mentioned the completion of units and further construction of 3 units in July 2018. It would have been useful to have these units mapped and photographed, they are not. Given the condition of the site, the lack of any ongoing construction activity on the site, I am satisfied that the site was a vacant site and still is a vacant site in accordance with section 5(1)(a)(iii) of the 2015 Act.

7.3. Housing Need and Site Suitability for Housing

- 7.3.1. The appellant challenges the need for housing in the area and addresses each test outlined in section 6(4) of the 2015 Act. At the outset, I would point the Board in the direction of previous decisions in the area ABP references PL93.VV0020 and PL93.VV0026 refers. In these cases, the issue of a need for housing was unsuccessfully challenged.
- 7.3.2. The appellant suggests that lands zoned developed residential were not included in the calculations undertaken in the core strategy of the Development Plan. Therefore, the site falls outside the requirements of the core strategy and housing is not projected for these lands. Section 6(4)(a) of the 2015 Act, requires the Board on appeal to have reference to the housing strategy and core strategy of the planning authority. In reality, the housing strategy and the core strategy of the planning authority is articulated in the Development Plan and illustrated by the various zoning provisions. I note section 2.2.1 of the Development Plan, that attempts to address existing service deficiencies in infrastructure by applying a phasing strategy to

residentially zoned lands. I note too, that the planning authority have stated that the subject lands can readily be serviced by newly installed service infrastructure. It would appear to me that the core strategy establishes an order of importance on what lands should be developed and that the subject site before the Board is at the front of the queue. I am satisfied that the subject lands were considered by the housing strategy and core strategy of the planning authority.

- 7.3.3. Section 6(4)(b) of the 2015 Act, asks for house prices and the cost of renting to be referenced on appeal. The appellant contends that given the high fixed costs of construction and the low selling price that there is little demand for housing at present. I note the planning authority's response regarding house price increases in Waterford and nationally, and that houses available for sale and rent have reduced resulting in more pressure on prices and availability. I also note the appellant's housing costs analysis. The housing market in terms of house price and house rental costs is a complex area driven by economic considerations at national, regional and at the householder level. The central theme of the Vacant Site Levy is to augment behavioural change and release sites for development. Such changes are needed so that urban land is used in the most efficient and effective manner possible and is put into the most productive and appropriate use in the interests of the common good. The levy is intended to act as a site activation and release mechanism.
- 7.3.4. The 2015 Act highlights the need for housing by reference to house prices and the cost of renting. The appellant states that selling prices of new houses does not exceed the actual construction cost, and references a 2016 report prepared by the Chartered Surveyors of Ireland. In addition, the appellant utilises average selling prices from the Daft House Report and the Property Price Register to illustrate the shortfall. All of this information points to the existence of house sales and the lack of rental accommodation in the area. To my mind this illustrates a market demand for housing in Waterford City but it also demonstrates a need for housing. Combined with the planning authority's assertion that house prices and rents have risen in Waterford City I consider it appropriate to include the site on the register in accordance with section 6(4)(b) of the 2015 Act.
- 7.3.5. With reference to section 6(4)(c) of the 2015 Act, the appellant states that they have attempted to engage with the planning authority to provide social housing, but all attempts have come to nothing. This, the appellant contends, means that that there

is not a need for social housing in accordance with the 2015 Act. The planning authority simply state that there is a need for social housing in the area, but have not provided detailed analysis on the matter. It is quite likely that there is a list of households that qualify for a social housing need in the area and in the wider Waterford City area. The planning authority have not supplied any data in this respect. Just because the landowner's offers of social housing not taken up, indicates that social housing in not required is a simplistic approach to the issue. On the balance of probability, it is most likely that there is a number of households that need social housing in this area and on that basis the site would accord with section 6(4)(c) of the 2015 Act.

7.3.6. The appellant quotes from census 2016 data in relation to the number of habitable houses available for sale or rent, and concludes that the vacancy rate of 10.6% is more than double the 5% rate highlighted by section 6(4)(d) of the 2015 Act. In terms of raw figures this may be so, however, the appellant's figures date from 2016 and I am concerned with the period from the placement of the site on the register (27 July 2017) to the section 11 Notice. In any case, as can be seen from the appellant's more recent figures on house sales, which amount to very little when compared to the total housing stock. I am satisfied that the actual figure of houses available for sale or rent is below 5%. I note that the planning authority have not prepared any information in this regard. The Board may wish to seek this information with a view to determining how the number of habitable dwellings for sale or rent as a proportion of the total number of houses in the area impacts upon housing need. However, in light of other factors which lead me to conclude that there is a housing need in the area, I am satisfied to recommend the site remain on the register.

7.3.7. There are no issues levelled at the suitability of the site for housing, by the appellant. The Council state that there is a new wastewater treatment plant to service the area as well as other infrastructure such as schools, roads and a library in the area. There is no obstacle to the provision of housing and that such housing can be serviced. In addition, I note that there is no thing that affects the physical condition of the site so as to limit the provision of housing. The site is therefore suitable for the provision of housing as set out in section 6(5) of the 2015 Act.

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 stand on the register in respect of the lands at Carrickphierish Road, Gracedieu, Waterford, as the site was and remains a vacant site. Therefore, the entry on the Vacant Sites Register on the 31 July 2017 shall stand.

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 overgrown and showing no signs of construction activity,

the Board considered that it is appropriate that a notice be issued to the planning authority to state that the site remain on the Vacant Sites Register.

Stephen Rhys Thomas
Planning Inspector

31 January 2019