



An
Bord
Pleanála

Inspector's Report ABP-302625-18

Type of Appeal	Section 11(3) Appeal against a notice under section 11(1).
Location	Lands at Ballyvoloon, Cobh, County Cork.
Planning Authority	Cork County Council.
Planning Authority VSL Reg. Ref.	VSR-0017.
Site Owner	William Kelleher.
Date of Site Visit	12 November 2018.
Inspector	Stephen Rhys Thomas.

1.0 Introduction

- 1.1. This appeal refers to a section 11(1) notice issued by Cork County Council, stating that the site stands entered on the Vacant Sites Register at lands at Ballyvoloon, Cobh, County Cork in accordance with the provisions of section 11 of the Urban Regeneration and Housing Act 2015 (as amended).

2.0 Site Location and Description

- 2.1. The appeal site is located at Ballyvoloon, within the northern suburbs of Cobh, County Cork. The site is reached by a laneway that provides access to a number of detached dwellings and farm buildings. The site comprises a large agricultural field in grass. The site slopes upwards from the private laneway, has hedge and stone wall field boundaries with electric fencing. A number of cattle were grazing in the field.

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 reports have assessed the site on the basis of the tests outlined in Section 5(1)(a) of the Act.

3.2. Development Plan Policy

- 3.2.1. The Cork County Development Plan 2014 is the operative development plan and the Cobh Municipal District Local Area Plan 2017 is the operative local plan. The site is located on lands that are subject to zoning objective CH-R-04 Medium A density residential development to include a mix of house types and sizes and to include the provision of a sports pitch. Any layout shall be designed to allow for connectivity with, and in particular pedestrian and cyclists movements between, the masterplan lands to the north.
- 3.2.2. Chapter 14 of Development Plan refers to Zoning and Land Use and includes variation number 1 with reference to implementation of the Vacant Site Levy in residential and regeneration areas as follows:

Vacant Sites Levy

It is the intention of Cork County Council to implement the provisions of the Urban Regeneration and Housing Act 2015, through the establishment of a Vacant Sites

Register, identifying sites on which a vacant site levy can be applied. The planning authority will proactively engage through the Municipal District sub-county structures, to identify suitable vacant sites on lands zoned residential and on lands designated as regeneration areas in this plan, which meet the criteria for inclusion in the vacant site register. This will be achieved through a focused application of the levy, facilitating sustainable urban development and bring such vacant sites and buildings in urban areas into beneficial use.

Regeneration Areas

The Urban Regeneration and Housing Act 2015, provides for the inclusion of objectives for the development and renewal of areas identified as being in need of regeneration. As part of the preparation of the Local Area Plans, regeneration sites have been identified in many of our towns. The main objective in identifying Regenerations Areas is to draw attention to the opportunities that exist to redevelop key areas within the towns, where such sites have the potential to contribute to the rejuvenation of the towns, deliver housing, and perhaps act as a catalyst for other developments. In accordance with the provisions of the Urban Regeneration and Housing Act 2015, regeneration areas may, in time, be subject to the Vacant Sites Levy where the regeneration area is vacant or idle and this has adverse effects on the amenities / character of the area.

County Development Plan Objective

ZU 5-1 Vacant Site Levy-Residential and Regeneration Areas

Encourage the development and renewal of areas, on lands zoned as residential that meet the criteria as set out in the Urban Regeneration and Housing Act, 2015 and on lands designated as regeneration areas, identified in Municipal District Local Area Plans, having regard to the Core Strategy, that are in need of regeneration, in order to prevent –

- (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) a 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. Nearby sites

PA Reference VS0017 and ABP reference ABP-300844-18. Confirm site on the VSR.

PA reference 14/4847. Permission to extend the duration of a planning permission for 280 dwellings, creche and sports pitch, 05/2345 refers

PA reference 13/4481. Revisions to site layout granted planning permission for 280 dwellings, creche and sports pitch, 05/2345 refers.

PA reference 08/7901. Revisions to site layout granted planning permission for 280 dwellings, creche and sports pitch, 05/2345 refers.

5.0 Planning Authority Decision

5.1. Planning Authority Reports

5.1.1. Response to Section 11 Submission Report – Site visit on 31 July 2018. Lands are in use for agriculture. The site accords with the amendments to the 2015 Act, however, the site should remain on the register but not be subject to the levy.

5.1.2. Register of Vacant Sites Report - The site is zoned Residential. The site is classified as residential land and has been vacant or idle for the last 12 months. Some of the lands to the south appear to be in agricultural use.

5.2. Planning Authority Notice

5.2.1. Cork County Council advised the site owner that the subject site (Planning Authority site ref. VSR - 0017) has not been cancelled on the Vacant Sites Register. The notice, issued pursuant to section 11 of the Act and dated 30 May 2018, stated that particulars of the site remain entered on the Vacant Sites Register and that further information can be obtained from the Council website.

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 County Council to retain the subject site on the Register. The grounds of the appeal can be summarised as follows:

- The site is use for agricultural purposes and has been for a number of years.
- The site is not currently served with infrastructure and not suitable for housing, unlike the large development site with planning permission to the west.
- There is not a need for housing, given the existing permission for 280 dwellings to the immediate west and 213 dwellings at Ringacoltig.

The appeal is supported by documentation from the Department of Agriculture and a signed letter from a lessee that states the use of the lands for agricultural purposes.

6.2. Planning Authority Response

In addition to initial reports and documentation the planning authority have submitted relevant planning history files, a copy of the submission received from the appellant in relation to the Notice to retain the site on the register and a copy of the letter issues to the landowner 31 August 2018.

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 Cork County Council VSR dated 29 December 2017. It is the purpose of a section 11 appeal 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, 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.

By reference to the planning authority notice served under section 11(1) of the 2015 Act and dated 30 May 2018 it is stated that the subject site is entered on the Vacant Sites Register. The subject site is located in an area zoned Medium A - Residential Development. Objective ZU 5-1 Vacant Site Levy-Residential and Regeneration Areas of the County Development outlines the Council's approach to regeneration and residential lands in relation to a vacant site levy on all vacant residential and regeneration lands as set out in the Urban Regeneration and Housing Act 2015. As the land use zoning has not changed since the placement of the site on the register, this assessment takes into account the characteristics of the site in the context of section 5(1)(a) of the Act, residential land.

7.1.2. The appellant states that the lands have been full agricultural use for some time and includes documentary evidence to support the assertion. The appeal lands are not serviced at present, however, if the large site with planning permission to the west is developed then matters will change.

7.1.3. 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, Circular letter PL 06/2018 refers, a notice was issued on the 30 May 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.

7.2. 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 and a signed letter from a lessee farming the lands. From my observations of the subject lands, I agree that the site is in use for agricultural purposes, cattle were grazing in the field on the day of my site visit. This is an important consideration because the Planning and Development (Amendment) Act 2018 changes 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, 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. In this instance, the appellant has stated that they have farmed the land for a number of years and received farm payments from the Department of Agriculture (dates from 2015). Unfortunately, there is no documentary evidence that places a longer time period on the number of years that the lands have been farmed by the appellant. However, I note that the planning authority refer to Land Registry documents that the site has been in the appellants ownership since 1992 and that the lands were zoned residential in 2003. I am satisfied that on balance, it most likely that the appellant has farmed the land since before it was zoned for residential purposes. Thus, by the application of circular letter PL 06/2018 advice, it would follow that the lands have been in agricultural use prior to the lands becoming zoned for residential purposes. The lands should not be subject to the vacant sites levy.

7.3. Vacant Site

7.3.1. A section 11 appeal requires the Board to determine if a site is no longer a vacant site. I can confirm that the condition of the site has not changed since I last visited an adjacent site on the 17 May 2018 insofar as the site remains in grass. However, the addition of grazing cattle confirms my view that the site is in use and has been in use for agricultural purposes. In addition, I acknowledge the submission of documentation from the appellant that indicates that the lands are in use for agricultural purposes. The site is not a vacant site in terms of the revised definitions provided by section 63 of the Planning and Development (Amendment) Act 2018.

7.4. Housing Need and Site Suitability for Housing

7.4.1. The appellant disputes that the site is in an area in need of housing or that the site is suitable for the provision of housing. The site is still 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 an extant planning permission on lands immediately to the west and the residential land use zoning of the subject site. I note that in the context of section 5(1)(a)(i) and (ii) of the 2015 Act,

the Board have already determined that a large site with the planning authority reference number VS-0017 should be placed on the register, reference ABP-300844-18 refers. 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.

7.5. Procedural Issues

7.5.1. I note that the planning authority have included a number of documents with this appeal, as follows:

- A report dated 17 September 2018 that notes the agricultural use, the amendments to the 2015 Act and an observation that the levy should not apply but that the site remain on the register.
- A section 11 Notice and map that outlines the extent of the site VSR – 0017 and folio 58018F.
- A recommendation dated 28 December 2017 in connection with the section 7 Notice, to remove a portion of the VSR – 0017 as it comprises a laneway.
- A report, photographs and a map that refers to a much larger site, but that does not include the appeal site.

7.5.2. I note that a previous appeal was made with respect to VSR-0017, but that it did not include the section 11 appeal site now before the Board. Notwithstanding the submission of material that does not refer to the appeal site as delineated in red, I am satisfied that the site outlined in relation to this section 11 Notice aligns with the lands in the ownership of the appellant and the appeal can be decided on that basis.

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 Ballyvoloon, Cobh, Co Cork as the site is not a vacant site. Therefore, the entry on the Vacant Sites Register on the 30 May 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 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

17 December 2018