



An
Bord
Pleanála

Inspector's Report ABP-302747-18

Type of Appeal	Section 11(3) Appeal against a notice under section 11(1).
Location	Lands at Baneshane, Midleton, County Cork.
Planning Authority	Cork County Council.
Planning Authority VSL Reg. Ref.	VS-0024.
Site Owner	John O'Brien.
Date of Site Visit	21 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 Baneshane, Midleton, 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 in the townland of Baneshane, Midleton, County Cork. The site referenced in the section 11 Notice relates to a large rectangular field adjacent to the public road. The field is in use for agricultural purposes, currently for livestock fodder. The field boundaries comprise hedgerows. In the immediate vicinity of the subject site are other agricultural fields either in grass or fodder crops. Further to the north of the site is a new school, a traveller accommodation facility and residential housing estates constructed and under construction.

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 East Cork Municipal District Local Area Plan 2017 is the operative local plan. The site is located on lands that are subject to zoning objective MD-R-01 Medium A Density Residential Development. - Full development of this site is dependent on revised / improved access arrangements being available to the N25. In submitting proposals for the development of this land, the developer will be required to demonstrate, to the satisfaction of the planning authority, that the proposals for this land can, in future, be satisfactorily integrated with other land in the Baneshane area and linked to the town centre, it's railway station and the site identified in this plan as a possible second station to serve the town at Waterrock. No new houses shall be commenced until the community and recreational facilities needed to serve the development are commenced by the developer. Development proposals shall be

accompanied by a Traffic Impact Assessment and Road Safety Audit which will guide development proposals pending the necessary improvements to the N25.

3.2.2. Section 1.7.20 of the LAP, states that 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 with the Municipal District sub---county structure, to identify suitable 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 focussed application of the levy, facilitating sustainable urban development and bring such vacant sites and buildings in urban areas into beneficial use.

3.2.3. Chapter 14 of County 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. None on the subject site. However, there are a number of extant permissions for residential development to the north and west of the subject site.

5.0 Planning Authority Decision

5.1. Planning Authority Reports

- 5.1.1. Response to Section 11 Submission Report – Lands are in agricultural use, purchase of lands occurred after zoned for residential purposes and so the site should stay on register.
- 5.1.2. Register of Vacant Sites Report - The site is classified as residential land and has been vacant or idle for the last 12 months. The planning history of the site and surrounding sites is provided. The site is adequately serviced. Parts of the site are at

risk from flooding. Southern part of the site may be in use for agriculture and a portion of the northern part of the site may be within a road reservation.

5.2. **Planning Authority Notices:** Cork County Council advised the site owner that the subject site (Planning Authority site ref. VS-0024) has not been cancelled and remains on the Vacant Sites Register. The section 11(1) notice dated 30 May 2018, site reference VS-0024 and Folio reference 169059F invited submissions. The Section 11(3) notice, dated 31 August 2018, stated that particulars of the site remain entered on 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 County Council to enter the subject site on the Register. The appeal is made with reference to a section 9 appeal and not a section 11 appeal. The grounds of the appeal can be summarised as follows:

- The site is not suitable for housing, as there are water services capacity constraints. A letter from Irish Water details the nature of the constraints, that include the delivery of a pump station, rising main and 24 hour storage, capacity upgrades to the WwTP, all of which may require statutory consents. There are roads constraints outlined in the LAP, the appellant has no control over these lands and so it is unfair to be so penalised.
- The lands are in use for agriculture and have been since at least 1985.
- There are procedural errors with regard to the section 7 Notices. The VSR site includes the home of the landowner and it is not clear if all landowners have been notified. The Board have no role in amending maps to align with each landowner or exclude a family home.

The appeal is supported by copies of the section 7 and section 11 Notices, solicitor's letters confirming the appellant as a full-time farmer, agricultural agent's letter, Department of Agriculture, Food and the Marine screen shot of lands in use for the basic payment scheme and a correspondence from Irish Water (pre-connection enquiry for 265 residential units).

6.2. Planning Authority Response

6.2.1. None

7.0 Assessment

7.1. Introduction

- 7.1.1. Firstly, the appellant has made this appeal under section 9 of the 2015 Act, and has asked the Board to cancel the entry of the site on the register. The 2015 Act sets out a number of opportunities for a landowner to appeal the placement of a site on the register. In this instance, it appears to me that the appellant has erred and assembled their appeal on the basis of the placement of the site on the register and not whether the site should remain on the register. Ultimately, the outcome is similar in terms of whether a site is on the register or not and therefore I would ask the Board to accept and consider the grounds of appeal as if they were made with respect to section 11 of the Act. In this regard, the appellant states that the lands have been in full agricultural use for generations and includes documentary evidence to support the assertion. The appeal lands are not serviced at present, there are infrastructural constraints that have been identified by Irish Water and roads constraints too, therefore the site is not suitable for housing.
- 7.1.2. 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.
- 7.1.3. 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 with the Folio reference 169059F stands 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 significantly 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.

7.1.4. 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 landowner 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 solicitor's letter that confirms the landowner's occupation as full-time farmer. From my observations of

the subject lands, I agree that the site is in use for agricultural purposes, arable land yielding a fodder crop at present. 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 generations and received farm payments from the Department of Agriculture since at least 1985. The planning authority state that the site was purchased on the 16 September 2014 and that the lands were zoned in the 2005 LAP. This is with

reference to Folio 136399F, in which John Barry is struck out and John O'Brien is inserted under Part 2 Ownership as of the 16 September 2014, a map is attached and the relevant lands are outlined in red. However, the lands that relate to Folio 169059F are not included in this transfer of ownership. Given that there is no contrary evidence on the file to suggest that the subject site has been transferred or sold recently I must conclude that the lands have been in the ownership of the appellant and have been and continue to be farmed. I am satisfied that on balance, it is 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 and 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 lands are in full agricultural use. In addition, I acknowledge the submission of documentation from the appellant that indicates 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 and as I have already outlined in section 7.2 of my report, the lands have been in the past and are currently farmed.

7.4. Housing Need and Site Suitability for Housing

- 7.4.1. The appellant disputes that the site is suitable for the provision of housing. The appellant points to roads constraints and the lack of wastewater facilities to service the development. The planning authority however, state that the site can be serviced for housing development but highlight that part of the site falls within a road reservation.
- 7.4.2. The appellant does not dispute the need for housing and I note that the lands are zoned residential and as stated by the planning authority, there is a need for housing in the area. It therefore follows, that the site is in accordance with section 5(1)(a)(i) of the 2015 Act.

7.4.3. The appellant questions the suitability of the site for housing and presents the case that roads infrastructure requires upgrading and crucially that water services in the area are deficient. Section 6(5) of the Act states the following:

A planning authority, or the Board on appeal, shall determine whether or not a site was suitable for the provision of housing for the purposes of this Part by reference to—

(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.

7.4.4. With reference to (a) and (c) there is nothing in the core strategy or in the condition of the lands that would affect the provision of housing. However, I have concerns whether the site can be 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. In this instance, I refer to the correspondence on the file from Irish Water, dated 13 October 2017 in response to a pre-connection enquiry for 265 housing units. The feasibility of servicing development at Baneshane is subject to the delivery of a pump station, rising main and 24 storage capacity, contributions are necessary to ensure capacity upgrades to the wastewater treatment plant, and these will be subject to statutory approvals, i.e. planning consent. It seems clear to me that there are significant obstacles in the way of serving the site with public infrastructure in the short term and therefore the site is unable to provide housing. I see nothing on file that states such facilities are now in place and operational.

7.4.5. Though there is a housing need in the area, the site is not suitable for housing at present because of the lack of available public infrastructure and facilities.

7.5. **Procedural Issues**

7.5.1. The planning authority and the appellant have included a number of documents with this appeal, as follows:

- A section 7(1) Notice (VS-0024) dated 21 November 2017 and that outlines a very large and fragmented site.
- A section 7(3) Notice (VS-0024) dated 9 January 2018, that outlines the same site as above, but with the addition of a smaller site outlined in red and with the Folio Reference 136399F.
- A section 11(1) Notice (VS-0024) dated 30 May 2018, that is accompanied by a map that outlines a single field with the Folio Reference 169059F.

7.5.2. I note the variety of maps that relate to the vacant site with the planning authority reference number VS-0024. In addition, there are three different owners to be found on the Cork County Council VSR under VS-0024, cross referenced with numerous Land Folio Reference numbers and a link to online maps. Notwithstanding the error made by the appellant with reference to a section 9 appeal and the profusion of mapping related to VS-0024, it is in the interests of fairness to consider the appeal. I am satisfied that the information submitted is relevant to the appeal of John O'Brien in relation to land with the Folio Reference number 169059F and as published on the register.

7.5.3. In my view, the appeal before the Board relates to land with the Folio Reference number 169059F and in the ownership of John O'Brien. I have assessed the condition of these lands with respect to section 5(1)(a) of the 2015 Act as amended and concluded that the land has been and is in use for agricultural purposes, so not vacant or idle, and that the land is not suitable for housing due to significant infrastructural deficits. Given that not all three criteria for determining a vacant site set out under section 5(1)(a) have been fulfilled, the site is not therefore a vacant site.

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 Baneshane, Midleton, County Cork as the site is not a vacant site. Therefore, the entry on the Vacant Sites Register on the 29 December 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 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, and
- (e) The site is not suitable for the provision of housing by reference to the lack of public infrastructure and facilities (within the meaning of section 48 of the Act of 2000) necessary to enable housing to be provided and serviced,

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

19 December 2018