



An
Bord
Pleanála

Inspector's Report ABP-302992-18

Type of Appeal	Section 9 Appeal against section 7(3) Notice.
Location	Shannon Eighter, Sligo.
Planning Authority	Sligo County Council.
Planning Authority VSL Reg. Ref.	SL-VS-23.
Site Owner	Kenneth Foley.
Planning Authority Decision	Place on Register.
Date of Site Visit	7 February 2019.
Inspector	Stephen Rhys Thomas.

1.0 Introduction

- 1.1. This appeal refers to a section 7(3) notice issued by Sligo County Council, stating their intention to enter a site at Shannon Eighter, Sligo 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)(a) and 5(2) of the URH Act 2015.

2.0 Site Location and Description

- 2.1. The appeal site is located on the N15, north of Sligo Town and opposite the junction with the Mountshannon Road. The site is accessed from the N15 via a narrow gateway and is very overgrown. A fast food drive-through restaurant is located to the south of the site and a dwelling is located to the north. The other boundaries of the site open on to rough agricultural ground.
- 2.2. The site is level for the most part but slopes downwards to meet the boundary with the dwelling house to the north. The site is overgrown and not maintained, there is a large degree of immature and mature trees on the greater part of the site. The site is readily visible from the fast food restaurant car park, where a well maintained timber fence separates the two sites.

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) of the Act. The Notice is dated 25 October 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 clarified by Section 63 of the Planning and Development (Amendment) Act 2018 which commenced upon coming into effect of the Act, 19 July 2018.

3.2. Development Plan Policy

- 3.2.1. The Sligo and Environs Development Plan 2010-2016 (SEDP) was adopted in November 2009 and was due to expire in 2015. When Sligo Borough Council was abolished in 2014, the lifetime of the SEDP was automatically extended in accordance with the provisions of section 11A of the Planning and Development Act 2000 (as amended). In August 2017, the provisions of the SEDP were further extended through incorporation into the Sligo County Development Plan 2017-2023 (CDP). The CDP states that the policies and objectives of the SEDP will continue to apply until the adoption of a Local Area Plan for Sligo and Environs.
- 3.2.2. The site is zoned **MIX 1- mixed uses (non-retail)**, promote the development of a dynamic mix of uses able to create and sustain residential and employment areas. Commercial (non-retail), residential, leisure, employment/enterprise uses are encouraged by this zoning.
- 3.2.3. According to the mapped transport objectives for Sligo Environs (Variation no. 1 – Eastern Bridge and Associated Roads Scheme), the following objectives are relevant as they either pass through or adjacent to the site:
- 3.2.4. **T1.1** - Upgrade and realignment of the N4/N15, from Hughes Bridge to Sligo/Leitrim County boundary, including the upgrading of the N16 from the N4/N15 junction to Duck Street roundabout on the N16.
- T2 Reserve a number of Intra-urban road links for the following routes:- Objective **T2.3** From Seaview Drive (Cartron Village) on R291 to the junction with N15 at Shannon Eighter/Cartron.
- 3.2.5. **Section 3.7.4 Vacant site levy**
- 3.2.6. The Urban Regeneration and Housing Act 2015 introduced the vacant site levy as a site activation measure, to ensure that vacant or underutilised land in urban areas is brought into beneficial use, while also ensuring a more efficient return on State investment in enabling infrastructure and helping to counter unsustainable urban sprawl.

The vacant site levy can be imposed by planning authorities under certain conditions in designated areas, i.e. where sites remain vacant and site owners/ developers fail to bring forward reasonable proposals, without good reason, for the

development/reuse of such property in line with the provisions of the relevant local area or development plan.

- 3.2.7. For the purpose of the application of the vacant site levy, a site means “any area of land exceeding 0.05 hectares identified by a planning authority in its functional area but does not include any structure that is a person’s home.”
- 3.2.8. The levy shall be applied annually by a local authority at a rate of 3% of the market valuation of the vacant sites, exceeding 0.05 hectares in area, with reduced and zero rates applying in certain circumstances (0.05 hectares roughly equates to one-eighth of an acre or 500m²). The market valuation shall be determined by the local authority by authorising a suitably qualified person to estimate the price which the unencumbered fee simple of the site would fetch if sold on the open market. The levy shall be payable by the registered owner(s) of the site. Sligo County Council will implement the vacant site levy as provided for in the Urban Regeneration and Housing Act 2015 and in accordance with the requirements set out in the Department’s Circular Letter PL 7/2016.
- 3.2.9. It is an objective of Sligo County Council to: **Objective O-REG-1** Identify areas in need of regeneration in Sligo City and, if appropriate, in the Key Support Towns of Ballymote, Enniscrone and Tobercurry, as part of the process of review or preparation of the respective local area plans.

4.0 Planning History

- 4.1. Subject Site:
None.

5.0 Planning Authority Decision

5.1. Planning Authority Reports

- A Vacant Sites report outlining the date of visit (initially 20 October 2016), zoning, planning history and the type of site for the purposes of the Act which in this case is Residential. The site is vacant.

The planning authority's submission is accompanied by the Assessment of Housing Need, colour photographs and maps, Folio references and maps, and Notices served under section 7 of the 2015 Act.

5.2. Planning Authority Notice

Planning Authority decided under section 7(3) to issue a notice on 25 October 2018 referencing sections 5(1)(a) and 5(2) of the Act and stating that the site has been entered onto the Vacant Sites Register. The notice was issued to Ken Foley, Supermacs, Pearse Street, Sligo as the reputed owner.

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

- The owner states that the site was only acquired by them on the 7 February 2018 and that they have no knowledge of the site from before that date. The new owner cannot therefore provide any evidence for use of the site during the relevant period.
- The owner reserves the right to appeal against any determination of market value.

The appeal is supported by the Folio number SL21436F.

6.2. Planning Authority Response

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

- The planning authority contend the ownership of the site and state that a zoning submission for the site dated 18 January 2018, referenced Ken Foley as the owner on maps that accompanied the submission. In any case, change of ownership is not relevant to the placement of the site on the register and be addressed by provisions under section 17 of the Act.

- The planning authority will not commence the determine the site value process until the appeals process is ended and anyway, opportunities to appeal market value are provided for under the Act.
- The planning authority's response lists out a number of documents that accompany their submission.

6.3. **Further Submissions**

The appellant clarifies the dates regarding ownership of the site, namely that the site was acquired on 7 February 2018 but that the submission on rezoning was made in anticipation of acquiring the site. The appellant reiterates their concern over the timing of assessing market value of the site.

The appellant raises a new issue about a road reserve shown in the Sligo and Environs Development Plan 2010-2016 and which still forms part of the new Development Plan for the area. The N4 N15 Realignment Sligo to County Boundary map layout shows a roundabout and new road entitled N15 traversing through the appellant's lands. Maps detailing the new roads have been submitted.

6.4. **Further Submissions – Planning Authority**

The planning authority state that issues to do with site acquisition and site value have been addressed in previous correspondence. The planning authority confirm a development plan roads objective (T2.3) runs along the northern boundary of the site. The drawings submitted by the appellant did not progress and cannot be considered to be a final design. Sligo County Council intend to progress the N15 Realignment scheme in the future but cannot confirm the extent of land acquisition affecting the site and acknowledge that this may have implications for the development potential of the site.

7.0 **Assessment**

7.1. **Introduction**

- 7.1.1. An appeal under the amended 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 Sligo County Council VSR on the 25 October 2018.

- 7.1.2. The Notice has been issued under the provisions of Section 5(1)(a) and (2) of the Act. The assessment undertaken by the Planning Authority to inform the placement 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 mixed use that includes residential purposes.
- 7.1.3. The main concerns of the appellant are that they only became owner of the site in February 2018 and are not in a position to give an account of the site's uses before that time. There is a question raised over the requirement of the planning authority to notify the owner of the market value of the site and this has not yet been done. Finally, the appellant notes that a road reserve in the current Development Plan for the area, traverses their site. The site is therefore not suitable for housing and does not comply with meaning of a vacant site outlined in section 5 of the Act.
- 7.1.4. The matter of the market valuation of the site is not relevant to the appeal in hand and I shall not address it here. The 2015 Act makes provisions for a landowner's dissatisfaction with a site valuation and this is dealt with by section 13, appeal of market value determination.

7.2. **Vacant/Idle**

- 7.2.1. The appellant sets out no grounds of appeal with reference to the use or purpose of the site during the relevant period. This is because the site was acquired by the appellant in February 2018. However, this is nearly eight months before the site was placed on the register, yet no account is given for this time period. On the day of my site visit I observed that the site was much overgrown with vegetation and a large proportion of the site was covered with maturing and colonising tree species. On that day the site appeared to have no apparent use and was vacant. Combined with my own observations and those of the planning authority for the relevant period, I would concur that the site was a vacant site in the context of section 5(1)(a)(iii)(l) of the 2015 Act.

7.2.2. The change of ownership during the relevant period may have an impact upon the amount of levy charged and section 17 of the 2015 Act is relevant in this instance. A change in ownership of a vacant site has no role to play in the assessment of whether a site should be on the register or not.

7.3. **Housing need and suitability of the site for housing**

7.3.1. The appellant has not raised any issues with regard to the need for housing in the area, I shall not address that criteria of the Act. However, the appellant raised questions in relation to whether the site is suitable for housing, as a road reserve traverses the site. I have examined the relevant maps for the area, in this case Map 2 Transport Objectives of the Sligo and Environs Development Plan 2010-2016, now incorporated into the County Development Plan 2017-2023. The map indicates roads reserves for a number of areas, Objective T1.1 and T2.3 refer to the subject site. The 2015 Act does not specifically mention roads objectives contained in development plans but Circular Letter PL 7/2016 provides advice to planning authorities and the Board in relation to the implementation of the Vacant Site Levy and roads objectives are mentioned, as follows:

It should be noted that local authority owned sites which have been identified for the provision of education facilities by both the Department of Education and Skills and the local authority, or identified by the local authority as reservations for capital works (such as for the provision of roads) should not be subject to the levy. In such cases, the provision of reservations for capital works in a local authority functional area must be reflected in the development plan objectives.

7.3.2. In my view, this is a very narrow interpretation of what the Act had in mind with reference to the core strategy and objectives of the development plan in general and reservations for capital works in particular. The Circular Letter issued by the Department appears to favour local authority owned sites and shield them from exposure to the levy if identified in the development plan for school sites or new roads. In my mind, this is not the intention of the Act. If it can be suitably demonstrated that the potential of a landowner's lands is limited by an objective of the development plan then the application of the levy would be an unreasonable burden wielded twofold by the planning authority.

7.3.3. In this instance, a road reservation traverses the site and the appellant has submitted preliminary design drawings dated June 2010 entitled N4/N15 Realignment Sligo to County Boundary prepared by the National Roads Authority and others to support their case. I cannot vouch for the preliminary design drawings but I am satisfied that a stated objective of the relevant development plan earmarks the site for a road reservation. This is relevant because section 6(5) of the Act states:

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.

7.3.4. Though the site can be served by public infrastructure and there may be no thing that affects the physical condition of the site to provide housing, the core strategy of the plan includes roads policies and objectives. The County Development Plan states that route corridors for both the N-15 and the N-17 have already been selected and will be advanced to the statutory process when approval is given by the TII to do so. The planning authority confirm a development plan roads objective (T2.3) runs along the northern boundary of the site. In addition, the planning authority state that the design drawings submitted by the appellant did not progress and cannot be considered to be a final design. Sligo County Council intend to progress the N15 Realignment scheme in the future but cannot confirm the extent of land acquisition affecting the site. The planning authority acknowledge that this uncertainty about a finalised design and land take may have implications for the development potential of the site.

7.3.5. The appeal site is impacted upon by the route corridor selected for the N15 and connected links and these are shown on Transport Objectives maps. I am satisfied that with reference to the core strategy, the appeal site is adversely impacted upon by a road reservation and consequently I have concerns that the site is not suitable

for housing. The site meets section 6(5)(b) and (c) of the Act, but by making reference to section 6(5)(a) the core strategy and its resultant policies and objectives that limit the potential of the site for housing means not all criteria are met. The site should be removed from the register.

- 7.4. I am satisfied that the site meets the criteria for inclusion on the register as referenced by section 6(4) of the 2015 Act and is a vacant site in accordance with section 5(1)(a)(i) and (iii)(l). However, I am not satisfied that the site meets all the criteria of section 5(1)(a) subsection (ii) by reference to section 6(5)(a) of the Act, specifically with reference to the core strategy and roads policies and objectives that may limit the provision of housing. The site should therefore be removed from the register.

8.0 Recommendation

- 8.1. I recommend that in accordance with section 9(5) of the Urban Regeneration and Housing Act 2015, the Board should cancel the Notice stating that the site at Shannon Eighter, Sligo was a vacant site for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 25 October 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 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,
- (d) A road reservation that traverses the site, the site is not suitable for housing as required by Section 5(1)(a) subsection (ii) by reference to Section 6(5)(a) of the Urban Regeneration and Housing Act 2015

the Board is satisfied that the site was not a vacant site for the relevant period.

Stephen Rhys Thomas
Planning Inspector

10 April 2019