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Bord  
Pleanála

## Inspector's Report ABP-303092-18

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| <b>Type of Appeal</b>                   | Section 9 Appeal against section 7(3) Notice. |
| <b>Location</b>                         | Clarion Road, Sligo.                          |
| <b>Planning Authority</b>               | Sligo County Council.                         |
| <b>Planning Authority VSL Reg. Ref.</b> | SL-VS-2.                                      |
| <b>Site Owner</b>                       | Health Service Executive.                     |
| <b>Planning Authority Decision</b>      | Place on Register.                            |
| <b>Date of Site Visit</b>               | 7 February 2019.                              |
| <b>Inspector</b>                        | 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 Clarion Road, 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 site is located on the Clarion Road in Sligo town. The large site shares boundaries with the Health Services Executive Training centre to the south, a student village apartment scheme to the east and housing estates to the west.
- 2.2. The site comprises a combination of rough grazing across most of the site and large areas of hardstanding to the south. A prominent field boundary of mature trees and hedgerow in a depression bisects the site. There are no buildings on the site save for a single transport container and horses were observed grazing the site.

## **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 **R-3 Medium High Residential Areas**. Objective: Promote the development of housing within a gross density range varying between 35 and 50+ dwellings per hectare (14 to 18+ dwellings per acre).

3.2.3. R3 zones are of particular importance, being generally located close to the city centre, employment sources, transport corridors and neighbourhood centres.

3.2.4. Innovative layout and design will be required in R3 zones, with high-quality landscaping and pedestrian/cycle connections with the surrounding areas.

3.2.5. A roads objective traverses the northern portion of the site. **Intra-urban Roads Objective T2.8** - From N15 at its junction with T2.3 eastwards to connect with existing N16 at Yeats Heights / Abbott roundabout, except for the section crossing Woodlands/Glendallon housing estate.

3.2.6. **Section 3.7.4 Vacant site levy**

3.2.7. 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.

3.2.8. 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.”

3.2.9. 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 500m<sup>2</sup>). 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.

- 3.2.10. 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, site description 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, 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 Mr Shane

Campbell, Estates Department, HSE North West, Old Convent Building, St John's Campus, Ballytivnan, 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 site was leased to Sligo County Council in May 2016 for one year as a social inclusion project for Traveller's Horses, the lease was later extended for 5 years at the request of the County Council, due to spending on temporary fencing and stabling.
- A portion of the site has been identified as a flooding risk in the CFRAMS report and is unsuitable for housing.
- Applications have been made to rezone the site for community development/low density residential in order to facilitate a decongregation policy and accommodation needs of the HSE.
- A portion of the land has been identified for a link road, transport objective T2.8 refers.

The appeal is supported by maps showing flood extents, a rezoning application and map extracts from the relevant development plan for the area.

### **6.2. Planning Authority Response**

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

- The planning authority acknowledge that a portion of the site (25%) is in use for horse grazing and that the area is restricted to a portion in the north-western side of the overall site. It is a minor portion of the site and the remaining majority and unused area is vacant.
- The planning authority acknowledge that a portion of the site is subject to flood risk. However, subject to good design it is possible that the overall site could be developed for housing.

- The application for re-zoning is noted, but a draft plan is yet to be prepared and the site should be assessed in relation to the prevailing plan for the area.
- The roads objective is noted for the area, but it is envisaged that the provision of an intra-urban road will be achieved incrementally and by developers. Rather than preventing development the provision of a road will release the site for development.
- The planning authority's response lists out a number of documents that accompany their submission.

### 6.3. **Further Submissions**

None.

## 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 the site was and is in use for a social inclusion project for Traveller's horses, the site is not suitable for housing as a portion of the site is subject to flood risk, a re-zoning application on the draft plan for the area has been made to better suit the HSE's needs for the site and that a portion of the site is subject to a road's objective. The planning authority refute these claims and state that the site can be developed subject to good design principles in relation to flooding and the provision of an intra-urban road. A minor portion of the site is in use at present and a draft LAP is yet to be drawn up for the area.

### 7.2. Vacant/Idle

- 7.2.1. Section 5(1)(a)(iii) states 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.*

7.2.2. This section of the 2015 Act seeks to clarify the purpose or use of a site in connection with any change in ownership. The Board should note that the relevant period for the purposes of the 2015 Act falls either side of the 19 July 2018 enactment date of the Planning and Development (Amendment) Act 2018. This has some relevance because the appellant has stated that the site in question has for some time been used for the grazing of horses in connection with a social inclusion project for Travellers Horse. The land is leased to Sligo County Council. The planning authority have stated that such a use only accounts for 25% of the entire site and so is only a minority portion of the site. I find this difficult to accept, as it appears to me that due to a lack of internal fencing, the horses I observed have free rein throughout the entire site. It may well be the case that the details of the lease restrict grazing to the area defined by the planning authority, but I have not seen a lease agreement document. However, I am of the view that the greater part of the site was and is in use for a social inclusion project and as such the site is not a vacant site.

### **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 and a portion of the site could be prone to flood risk.

7.3.2. Firstly, according to the CFRAMS maps for the area submitted by the appellant, significant areas of the site are subject to 10 % AEP Fluvial Extent and these areas correspond to the low-lying areas that bisect the site. The planning authority also note the flood risk areas of the site but counter that with good design and appropriate mitigation measures the site can be developed. I would agree with the planning authority in this respect, the flood risk associated with the site amounts to the lower lying areas that align with a mature field boundary and hedgerow. In my view, this is not such a limiting factor to render the entire and greater portion of the site unsuitable for housing.



7.3.3. 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 T2.8 refers to the subject site and crosses its northern extent. 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.*

7.3.4. 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.

7.3.5. In this instance, a road reservation traverses the northern portion of the site. 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.*

- 7.3.6. 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.
- 7.3.7. The Sligo and Environs Development Plan now incorporated into the County Development Plan differentiates between strategic roads objectives and intra-urban roads objectives. An intra-urban roads objective traverses the northern portion of the site, T2.8 refers. 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 appeal site is not impacted upon by the route corridor selected for the higher priority strategic roads objectives shown on Transport Objectives maps. I am satisfied that with reference to the core strategy, the appeal site is not adversely impacted upon by a road reservation exclusively derived from the core strategy. As the planning authority have pointed out the site could be developed by incorporating a link road through the site and thus not limit the potential of the site for development. I would agree that the local objective of achieving intra-urban road connections is not a core strategy matter. I am satisfied that the site meets section 6(5) of the Act, the site should remain on the register.

#### **7.4. Other Matters**

- 7.4.1. The appellant has stated that a re-zoning submission on the pre-draft Sligo and Environs Development Plan has been made. The submission states a change from high density residential to community uses and less dense residential zoning that would suit the HSE's needs as a residential care giver for their clients on a decongregation programme. The aims and needs of the HSE are important and relevant to this site. However, the implementation of the 2015 Act does not take account of future plans and programmes but grounds assessment of vacant sites on the operative development plan at the time. In this instance, the lands are zoned for residential purposes and any assessment is made on that basis. However, I should note that if circumstances change, section 10 of the 2015 Act allows for the planning authority to cancel the entry on the register in respect of that site.

## 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 Clarion Road, 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) The site is not a vacant site within the meaning of section 5(1)(a)(iii)(I) of the 2015 Act, as the site has been and continues to be in use for a social inclusion project involving Traveller's horses,

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

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Stephen Rhys Thomas  
Planning Inspector

18 February 2019