



An  
Bord  
Pleanála

## Inspector's Report ABP-303413-19

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<b>Type of Appeal</b>	Section 9 Appeal against section 7(3) Notice
<b>Location</b>	R7 east of Elm Wood, Roslevan, Ennis, Co. Clare
<b>Planning Authority</b>	Clare County Council
<b>Planning Authority VSL Reg. Ref.</b>	VSR11
<b>Site Owner</b>	Gildoc Ltd
<b>Planning Authority Decision</b>	Place on Register
<b>Date of Site Visit</b>	11 April 2019
<b>Inspector</b>	Una Crosse

## 1.0 Introduction

- 1.1. This appeal refers to a section 7(3) notice issued by Clare County Council dated 3<sup>rd</sup> January 2019 with the Register stating that the site was placed on same on 21<sup>st</sup> December 2018. The Notice states that it is the Council's intention to enter a site at R7 east of Elm Wood, Roslevan, Ennis, Co Clare on to the Vacant Sites Register (VSR) under Reference VSR 11, in accordance with the provisions of section 6(2) of the Urban Regeneration and Housing 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 6(4) of the URH Act 2015.
- 1.2. The site includes a number of folios as follows:
  - CE44711F – Gildoc Limited (appellant)
  - CE45516F & CE3524 – St Flannans (Killaloe) Diocesan Trust
  - CE47862F & CE43188F – Conor Fanning

## 2.0 Site Location and Description

- 2.1. The site is located to the east of Ennis Town centre in an area known as Roslevan. No area is provided in the documentation. The site broadly comprises two distinct areas, the site area to the north divided from the remainder of the site by a hedgerow through the site. The site is adjoined to the east by a ribbon of one-off houses which address a minor public road. There is a short strip of the site addressing this road. To the north the site addresses the Tulla Road with this area of the site bounded by high timber boundary fencing. To the south the site adjoins the Church and car park with existing housing known as Elm Wood to the west.

## 3.0 Statutory Context

### 3.1. URH ACT

- 3.1.1. The Notice issued under Section 7(3) of the Act states that the PA is of the opinion that the site referenced is a vacant site within the meaning of Section 5(1)(a) and 6(4) of the Act. The Notice is dated 3<sup>rd</sup> January 2019 and is accompanied by a map

outlining the extent of the site to which the Notice relates. I note that on the Register, a copy of which is included in the documentation, it states that the site was placed on the Register on 21<sup>st</sup> December 2018.

- 3.1.2. It is noted that the definition of vacant or idle has been amended by Section 63 of the Planning and Development (Amendment) Act 2018 which commenced upon coming into effect of the Act. This section of the Act amends Section 5 of the Act of 2015 by substituting Section 5(1)(a)(iii) for 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*”.

## 3.2. Development Plan Policy

- 3.2.1. The site is zoned for residential development in the Clare County Development Plan 2017-2023 within the Ennis Municipal District in the neighbourhood of Roslevan which is addressed at Section 2.3 of the Plan. Section 16.2.8 of the Plan refers to lands identified as areas on which the Vacant Site Levy can apply with site R7 – east of Elm Wood, Roslevan included. In addition, section 1.6.4 of the Ennis Municipal Plan states that there are a number of sites in the Ennis Municipal District that are identified as Areas where the Vacant Sites levy can apply with R7 East of Elm Wood, Roslevan specifically included.

## 4.0 Planning History

- 4.1. **Ref. 17/400** – permission granted for 14 detached houses and 12 semi-detached houses.

4.2. Other permissions on the lands – Ref. 07/56 and Ref. 10-21088 and extensions to same have expired.

## 5.0 Planning Authority Decision

### 5.1. Planning Authority Reports

- An Assessment Vacant Site Report, signed on 1 November 2018 and co-signed on 7 November 2018 was prepared for the site which describes the site with photos of same, details the planning history (as above) and notes that a site inspection was carried out on 17 October 2018.
- It is stated that the Housing Section of Clare County Council is considering the purchase of an area of land at the front of the site, close to the Tulla Road. In respect of ownership it refers to a series of folios which apply to the site (outlined in introduction above). It refers to sections 5(1)(a) and 5(1)(b) of the Act and to Section 5(2).
- In a section entitled criterion it states that the site is greater than 0.05ha, is not a persons home, the site is zoned residential, is situated in an area where there is a need for housing with reference to the housing needs assessment for Ennis carried out by the PA in 2018, is suitable for housing and in response to the question as to whether the site has been vacant or idle as per Section 5(1)(a)(iii) for a period of 12 months, it is stated yes. It is stated that the site is not regeneration land with the response to questions relating to regeneration stated N/A.
- It is concluded that the site is zoned for residential use, deemed suitable for residential use, suitable for the provision of housing for the provision of housing for the purposes of the act and with reference to the core strategy, public infrastructure and its physical condition. It is stated that despite some ground works taking place at the northern section of the site it is considered that the site has been vacant for a period in excess of 12 months. The site is deemed suitable for inclusion on the Register.
- A section 7(1) notice was issued on 8<sup>th</sup> November 2018 to the three site owners which I note also refers to regeneration lands as well as residential. A response

was received from one of the owners (the appellant) stating that the site references as VSR 11 is not completely owned by Gildoc Ltd with their ownership extending the land included in permission P17/400 and requesting same is not included on the VSR.

- A second report dated 18 December 2018 states that some ground works have been carried out at the northern part of the site and the ground works are believed to be associated with a housing development entitled 'Curates Court' at this site. The section 7(1) notice is referenced as is the response to same.
- An assessment section notes that the existing extant permission is not sufficient to show that a site is not vacant or idle and considered its entirety should be placed on the Register and a letter and proposed Notice are outlined which it is stated should be sent to the 3 owners with a different letter proposed to the two owners who did not respond to the Section 7(1) notice which does not refer to the response to the Section 7(1) notice received from the appellant.

## **5.2. Planning Authority Notice**

- 5.2.1. Planning Authority decided under section 7(3) to issue a notice on 3rd January 2019 referencing sections 5(1)(a) and 6(4) of the Act and stating that the site has been entered onto the Vacant Sites Register. It is stated that the notice was issued to the three owners.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

An appeal was received from Gildoc Ltd which is summarised as follows:

- Consider received correspondence in error as planning permission granted on the site under P17/400 in September 2017 with commencement notice applied for on 8 January 2019 with intention of commencing work 28 days after;
- Indicated this to the planning section of Clare Co. Co. without success and request this correspondence to be filed in the event of any future disputes.
- Correspondence from Clare County Council, dated 9<sup>th</sup> January 2019 (following receipt of 7(3) Notice on 3<sup>rd</sup> January 2019) attached noting appellant part owner

of folio ref. CE44711F and that similar notices were issued to other owners, that despite permission and commencement notice Council of opinion that site is vacant in accordance with Sections 5(1)(a) and 6(4) of the Act, that in arriving at this determination that planning status fully considered but existence of same not sufficient to show that site is not vacant and reference is made to provisions of Section 10(1) and 10(2).

- Correspondence dated 7<sup>th</sup> January 2019 from the appellant to Clare County Council stating that they are not the owner of the entire site, a commencement notice has been issued and totally disagree that the site is derelict or vacant site and request it is not placed on the register.
- The correspondence sent to the Council on 13 November 2018 in response to the Section 7(1) Notice included as is the Section 7(1) Notice.

## 6.2. Planning Authority Response

A response received from the Planning Authority was received on 22 January 2019:

- Attaches reports, Notices and correspondence;
- Site is zoned for residential development in CDP and is considered vacant under provisions of Section 5(1)(a) and 6(4) which are outlined;
- Reference is made to the correspondence from the appellant referencing the commencement notice and stating that the Council does not consider the intention to carry out development at a site, existence of an extant permission or submission of a commencement notice sufficient to render the site non-vacant and considered appropriate to include on the Register.
- Council is satisfied that the subject site has been vacant or idle for the duration of 12 months prior to entry on the Register.
- No commencement notice received as of date of correspondence but note appellant position on the matter and Council will monitor the site and if at any time the Council are satisfied that the site is no longer a vacant site (should development take place on the site) reconsideration can be given to the entry in respect of Section 10(2) of the Act.

### 6.3. **Appellant Response to PA response**

A response was received by the Board from a legal representative of the appellant in response to the Planning Authority's response to the appeal. It is summarised as follows:

- Technical objection to Notice dated 8<sup>th</sup> November 2018 which refers to the site of which you are the registered owner with Site VSR 11 comprising folios which are not in appellant's ownership and consider Notice contains an inaccurate averment, is fundamentally flawed and does not constitute a valid notice.
- Map outlining property in appellant's ownership attached which was purchased in 2017 with permission sought following pre-planning consultations.
- Following site purchase appellant involved in other work and was making efforts to obtain finance to enable them commence development.
- Contracts issued on 10 of the 12 proposed properties with delay in commencement due to commitments on other projects with site clearance works undertaken around Nov/Dec 2018 and lodged a commencement notice.
- Consider site should not have been included on the VSR as all steps necessary to engage with PA to obtain permission, site clearance works commenced, properties sold and commencement notice served.
- Appellant bona fide developer who is not sitting on the property and does not fit into the category of person at which the legislation is aimed with placing site on the Register misguided and inappropriate.

### 6.4. **PA Response to Appellant Response to PA**

A response was received by the PA to the appellant's response to their submission on the appeal. It is summarised as follows:

- Regarding validity of Section 7(1) Notice, these notices sent to all owners of the lands designated as Clare VSR 11 with wording of Section 7(1) outlined;
- Points regarding extant permission and work commitments acknowledged but only status of subject site under consideration;

- Extant permission not sufficient to render site not vacant as the permission has not been carried out in accordance with provision of the Act with the spirit of the legislation seeking to ensure vacant and underutilised land in urban areas is brought into beneficial use;
- Appreciate landowners position and will monitor the site under Section 10(2) and if not longer a vacant site reconsideration can be given to the entry on the register;

## 7.0 **Assessment**

### 7.1. **Process**

- 7.1.1. There are a number of matters of process which I propose to address. Firstly, the matter of the 12 month period and secondly the matter of multiple site owners. I will address each in turn.

#### **12 Month Period**

- 7.1.2. I would refer the Board, in the first instance, to an issue pertaining in relation to the 12 month period prior to the placing of the site on the Register as per the Section 7(3) Notice currently appealed. Section 6(2) of the Act is very clear. It states that a planning authority shall enter on the register a description including a map of any site in its functional area which was, in the opinion of the planning authority, a vacant site for the duration of the 12 months preceding the date of entry. This is very clear. The subject site is stated to have been placed on the Register on 21<sup>st</sup> December 2018 with the Notice dated 3<sup>rd</sup> January 2019 meaning that the relevant 12 month period would have commenced on 22<sup>nd</sup> December 2017. I would note that the reports prepared by the planning authority refers to a site inspection which informed their placing of the site on the register. In relation to the subject site it is stated in the report prepared to support the inclusion of the site on the register (site report dated 1 November 2018) that the site was inspected on 17 October 2018. I would also note that the report includes a list of criteria one of which asks if the site has been vacant or idle for a period of 12 months to which the response is yes with the conclusion of



the report that it is considered that the site has been vacant for a period in excess of 12 months.

- 7.1.3. Therefore, if the site was inspected for the first time for the purposes of the Vacant Site Levy process on 17 October 2018, the planning authority cannot categorically state that, in respect of the definition of vacant or idle in section 5(1)(a)(iii) of the Act, the site was vacant and idle on 22<sup>nd</sup> December 2017 which would comprise the commencement of the 12-month period. While this may appear to be a tedious approach to the matter at hand, the Act is very clear that the relevant period for consideration is the 12 month period preceding the date of entry. It is incumbent on any planning authority to have details of inspections which can clearly indicate that in their opinion the site was vacant or idle for the 12 months preceding placing the site on the Register. It is not sufficient to assume so. I therefore recommend that the Notice issued should be cancelled on the basis of this defect in the process. I consider that the PA could recommence the process once they have evidence that the site has been vacant or idle for the period of 12 months preceding the placement of the site on the Register. I would also note that the Board have included this reason in their decision to cancel such Notices in a number of other instances.

### **Multiple Owners**

- 7.1.4. As outlined in Section 1 above and as outlined in the reports of the Planning Authority the site subject of Ref. VSR11 has three owners with five folio references as follows: CE45516F & CE3524 – St Flannans (Killaloe) Diocesan Trust, CE47862F & CE43188F – Conor Fanning, CE44711F – Gildoc Limited. No map is included by the PA of the folios. I would note that the appellant has stated within correspondence on file that they own part of the site and they have also included a map of their site which has one folio number. It is stated by the PA in their correspondence that the Section 7(3) Notice has been issued to all owners. Only one of the owners issued with notices has appealed same to the Board. I would in this regard draw the Board's attention to the fact that given that there is only one reference number and the consequent Notice has been used for the accumulated site that the decision of the Board either to confirm or cancel would apply to all notices issued under that reference number – VSR11.

- 7.1.5. As outlined in relation to Planning Policy the combined site is referenced as R7 in the County Development Plan and is identified as an area on which the Vacant Site Levy can apply. It would appear that this is the rationale for the inclusion of the lands within one reference number. However planning units or planning objectives are arguably not an appropriate means of addressing what constitutes a site for the purposes of the Vacant Site Levy. I would note that in a response to the appeal (29<sup>th</sup> March 2019) the PA reference Section 7(1) of the Act which refers to giving written notice to the owner. While they refer to same on the basis that they gave notice to all the owners of the overall site, the Act expressly at Sections 7(1) and 7(3) which refers to 'owner' of the site and not owner/s or owners. I consider that procedurally separate notices under separate references should have been issued to the separate owners in order to facilitate an equitable appeal process and facilitate an effective mechanism for applying the correct valuation and levy for each owner. In addition, if the appellant in this instance were to activate the permission on their lands it would potentially lead to the site being taken off the Register despite the fact that the remaining parts of the site in the other two ownerships, without extant permissions, remain unchanged.
- 7.1.6. The Board do not have any role or function in amending maps or revising the site referenced to a Section 7(3) Notice. The Boards role is to confirm or cancel the Section 7(3) Notice before them and given the procedural issues outlined above I recommend that the Notice should be cancelled.
- 7.1.7. While it is my opinion that the Notice should be cancelled for the procedural reasons outlined above, if the board do not share this view, I will provide my opinion below in respect of the site in relation to the matters arising in Section 5(1)(a).

## **7.2. Vacant or Idle/Purpose of the Lands**

- 7.2.1. In relation to the vacancy or otherwise of the site or part thereof, there are a number of considerations. Firstly, as outlined in Section 3.1 above, Section 5(1)(a)(iii) has been amended by Section 63 of the Planning and Development (Amendment) Act, 2018 which provides that it states that the site, or the majority of the site is—

(l) 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*.”.

I will address both (I) and (II) in turn.

### 7.3. **Vacant or Idle**

- 7.3.1. The appellants state that the site is not vacant or idle as they intend to commence a residential development on the site that they own pursuant to a permission granted on the lands. As the PA point out the existence of an extant permission or an intention to development on foot of same does not negate the application of the levy given that the intention of the legislation is to activate development on lands. Permission facilitates the development of land rather than activating same. However, it is clear that development was commenced on the site in the past with hoarding on the site, a site cabin and other materials with the site disturbed. Therefore work was commenced on the site and ceased. It is not clear what permission was activated on the lands but a permission was activated at some point in time. Having regard to the concerns outlined above in relation to the 12-month period I do not consider that the Board can categorically state that the site was vacant or idle for the 12-month period concerned and in this regard I do not consider that it can be determined that the site is vacant or idle.

### 7.4. **Purpose of the Lands**

- 7.4.1. Section 63 of the Planning and Development (Amendment) Act, 2018 provides a revised definition of Section 5(1)(a)(iii) of the Act with subsection (II) included and referring to sites which are 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.*”.

7.4.2. I note that the appellant does not claim that the site is being used for any specific purpose but rather references the intention to commence development on the basis of the extant permission on his lands. I do not consider that this section of the Act is relevant in the present case.

## 7.5. **Housing Need**

7.5.1. While not specifically addressed I would note that the reports prepared by the Planning Authority refer to the site being situated in an area where there is a need for housing with reference to the housing needs assessment for Ennis carried out by the PA in 2018. This document was requested by the Board from the PA and what was received was a report from the Hosing Agency entitled Summary of Social Housing Assessment 2018, key findings which provides figures by County for a number of matters such as number of households qualified for social housing support per Local Authority. This is not what is required by Section 6(4) of the Act and in this regard I do not consider that there is sufficient evidence to determine that the PA have adequately addressed the matter of housing need as required by the Act. While the Board may wish to investigate this matter further, given the procedural issues arising I consider it may be more appropriate to include it as a matter which has not been satisfactorily addressed.

## 8.0 **Recommendation**

8.1.1. I recommend that in accordance with section 9(5) of the Urban Regeneration and Housing Act 2015, the Board should cancel the entry on the register of site (VSR11) site at R7 east of Elm Wood, Roslevan, Ennis, Co. Clare was vacant or idle for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 3rd January 2019 shall be cancelled.

## 9.0 **Reasons and Considerations**

9.1. Having regard to

- (a) the information submitted to 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 Inspector,
- (d) the absence of sufficient evidence to support the contention of the planning authority that the site was vacant and idle for the period of 12 months preceding the date of placing the site on the register,
- (e) the inclusion of an accumulation of sites within separate ownerships within the Section 7(3) Notice issued and
- (f) the Board is not satisfied that the Planning Authority have satisfactorily determined, as required by Section 6(4) of the Act, that the site is situated in an area in which there is a housing need.

the Board considered that it is appropriate that a notice be issued to the planning authority to cancel the entry on the Vacant Sites Register.

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Una Crosse  
Senior Planning Inspector

April 2019