



An
Bord
Pleanála

Inspector's Report ABP-303456-19

Type of Appeal	Section 9 Appeal against section 7(3) Notice.
Location	Strandhill Road, Knappaghmore, Sligo.
Planning Authority	Sligo County Council.
Planning Authority VSL Reg. Ref.	SL-VS-39.
Site Owner	Tom Kenny.
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 Strandhill Road, Knappaghmore, 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 within the western environs of Sligo town centre, off the northern side of the Strandhill Regional Road, R292. The site is located immediately opposite the junction of the Strandhill Road and Kevinsfort/Kestrel Drive. The site extends northwards to Clara Court to the north east and an office/business park to the north west.
- 2.2. The front of the site within the boundary of the VSR map includes a car parking area to the front of a single storey office building. The office building is in good repair and well maintained. Access to the rear of the site is gained via a side gate. The site is mostly level and partially overgrown with young trees and grass. There is a large storage shed situated at the mid portion of the site, this is overgrown with climbing plants and there are some ancillary storage structures in the northern portion of the site too. A number of portacabin office structures are stored on 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)(a) and 5(2) of the Act. The Notice is dated 19 December 2018 and is accompanied by a map outlining the extent of the site to which the Notice relates.

3.2. **Development Plan Policy**

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.

The site is zoned **R2 – low/medium-density residential areas**. Objective: Promote the development of housing within a gross density range varying between 20 and 34 dwellings per hectare (8 to 13 dwellings per acre).

In R2 zones, blanket construction of three- and four-bedroom houses will be discouraged.

All new residential development will have to recognise and reflect the changing demographic structure in the house type and design, site layout and the additional facilities proposed.

While housing is the primary use in these zones, recreational structures, crèches/playschools, educational facilities, community buildings, sheltered housing and corner shops will also be considered.

3.2.1. **Sligo County Development Plan 2017-2023**

Section 3.7.4 Vacant site levy

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.

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.”

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.

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:

PL13/46. Permission refused to retain office accommodation. August 2013.

5.0 Planning Authority Decision

5.1. Planning Authority Reports

- A Vacant Sites Report (Reports 1, 2 and final memo report) outlining the date of site visits (initially 7 October 2016, 26 October 2017, then again 5 November 2018), 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 deemed to be vacant.

The planning authority's submission is accompanied by Appendix 1 of the Sligo VSR - Assessment of Housing Need, colour photographs, 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 19 December 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 Tom Kenny, 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 is and has been in use as a builder's yard by Kilcawley Construction. Plant and machinery associated with the construction trade is stored on the site and has been since before all the planning acts.
- The maps supplied by Sligo County Council is at variance with Land Registry Map.
- The redevelopment of the site requires the entire 'yard' to be zoned residential. At present 60% of the site is residential and the remainder is zoned industrial. The owner has made approaches to the planning authority to have the entire site zoned residential in the new development plan.
- The owner has intentions to develop the site for housing and has been in talks with planners and hired design professionals.

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 the site was in use as a builder's yard but understand that Kilcawley Construction has moved to another premises. Site surveys have shown no active use for the site over the relevant period.
- The VSR site boundaries correspond to the land use zoning for residential uses and so may not align with the Land Registry maps.
- The redevelopment of the whole yard is a matter that can only be dealt with in the context of the preparation of the Sligo and Environs LAP.
- In addition to previous documentation submitted by the planning authority, they have included the initial submission letter from Tom Kelly with regard to the section 7(1) Notice.

6.3. Further Submissions

The appellant has submitted a response to the planning authority and additional information to substantiate their original grounds of appeal, and can be summarised as follows:

In addition to the contention that the lands are still in use for storage uses associated with the building trade, it is stated that electricity invoices for the site are still paid by Kilcawley Construction.

A linear and narrow portion of the site along its eastern side is impinged on by the neighbouring site, solicitors have been engaged and a legal resolution to this issue may take some time.

A new Development Plan that incorporates the rezoning of the site to entirely residential would make it more financially viable to develop in one go.

The submission is supported by Land Registry documentation, an OS map detailing the lands zoned industrial, boundary issue resolved and the location of a machinery and materials shed.

6.4. Planning Authority Further Response

The planning authority acknowledge that the site has been in use as a Builder's Yard for some time but cannot confirm the exact dates. The date of the commencement of the Builder's Yard use and the date of ownership are an important consideration. It would appear from the Indenture submitted by the owner, that they acquired the

lands in 1982, this is after the lands were zoned for residential purposes, the 1979 revision of the Corporation of Sligo Development Plan refers. The lands have stayed residentially zoned since that date. This has implications in terms of the section 5(1)(a)(iii)(II) of the 2015 Act as amended. The Builder's Yard use has since transferred to Sansheen Business Park and surveys of the appeal site show no use for the site.

The boundary issue relates to a very minor portion of the site and the planning authority maintain that the site should remain on the register.

Any rezoning applications can be dealt with under the review of the plan and in any case that area zoned industrial is not included within the vacant site outline.

The further submission is supported by recent photographs showing the condition of the site, a planning report and decision order for the site (PD13/46) refusing permission for the retention of an office extension.

6.5. Further Response

The appellant reiterates their grounds of appeal and the further submissions made by them in response to the Council's submissions. Of note, the appellant clarifies the ownership of the site since 1982 following company re-structuring and explains why the office component of Kilcawley Construction moved to new offices elsewhere. The site continued to be used as a builders yard at all times and a letter has been forwarded from the Managing Director of Kilcawley Construction confirming this. The boundary dispute is revisited, and the appellant claims it would constrain the overall site in addition to the lack of an overall residential zoning being applied to all the lands.

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 19 December 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 residential purposes.
- 7.1.3. The appellant maintains that the site has been and is in use as a storage compound associated with the construction trade for some time. There are mapping errors in so far as the VSR outline does not align with entire landholding. The owner also maintains that development of the site would only be viable if the entire portion were zoned residential, in any case design consultants have been employed to develop plans. The planning authority acknowledge the use of the site in the past, but highlight its idle condition during the relevant period. In addition, the planning authority clarify the status of the VSR boundaries relative to the zoning and welcome development in the future.

7.2. Vacant/Idle

- 7.2.1. Section 5(1)(a)(iii) states the following:

In this Part, a site is a vacant site if—

(a)(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. In this instance, the owner has stated that the site has been for some time in use as a yard to store materials and machinery associated with the building trade, under the name of Kilcawley Construction. In addition, the owner has submitted a letter from the managing director of Kilcawley Construction that states the site has been and continues to be used as a builder's yard. The planning authority acknowledge this to be the case in the past but point out that photographic surveys during the 12 months prior to placement of the site on the register, it was determined to be idle. From my observations of the site, it has the appearance of a site that has not been in use in recent times. I also noted a sign in the window of the office building that alerts visitors to the fact that Kilcawley Construction have moved offices. However, I note that the owner submits that the office operations of the construction company did move elsewhere but the builder's yard function remains.

7.2.3. The planning authority have highlighted that the historic use as a builder's yard cannot be verified and that the current owner appears to have taken possession in 1982, after the lands were zoned for residential purposes in the 1979 revision of the Development Plan. In response to this the owner states that company re-structuring led to the ownership change and that the site had always been used as a builder's yard before the coming in to place of the Planning Acts.

7.2.4. In addition, the planning authority have submitted the details of a planning application for the retention of an office extension, in which the planning report describes the vacant and unused nature of the site. I find the information submitted by the planning authority to be useful. On the one hand, the site has all the appearances of being vacant or idle and the photographic surveys during the relevant period show this. On the other hand, the appellant appears to have become the owner but not the purchaser of the site after it had been zoned for residential uses. This is an important distinction to make as section 5(1)(a)(iii)(II) of the 2015 Act

clearly refers to purchase rather than change of ownership. I do note that section 3 of the Act defines 'owner' and section 17 refers to death and change of ownership of a vacant site once on the register. In this instance, it may be safer not to assign too much weight to when the appellant became the owner as it seems to have been through exchange rather than purchase.

7.2.5. Based upon my observations of the site, I could determine no use ongoing or readily visible evidence that the site had accommodated a use in the recent past. I note the report prepared by the planning authority for the site prior to the placement on the register that drew the same conclusions. I am not convinced by written assertions that the site is in use and thus I am satisfied that the site was and still is vacant or idle and was a vacant site for the purposes of section 5(1)(a)(I) of the 2015 Act as amended.

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

7.3.1. The owner does not dispute that the site is in an area in which there is a need for housing. With reference to section 5(1)(a)(i) the need for housing in the area, I am guided by the Assessment of Housing Need for the Sligo and Environs Area prepared by Sligo County Council in January 2018. This document sets out to determine if there is a housing need in the area prior to the establishment of the VSR. The report makes reference to all the criteria set out in section 6(4) of the 2015 Act, as follows:

- (a) the housing strategy and the core strategy of the planning authority,*
- (b) house prices and the cost of renting houses in the area,*
- (c) the number of households qualified for social housing support in accordance with section 20 of the Housing (Miscellaneous Provisions) Act 2009 that have specified the area as an area of choice for the receipt of such support and any changes to that number since the adoption of the planning authority's development plan, and*
- (d) whether the number of habitable houses available for purchase or rent was less than 5 per cent of the total number of houses in the area.*

7.3.2. Briefly, the report concludes that the Housing Strategy and Core Strategy both envisage growth in the area, house prices and rents have risen showing demand,

the need for social housing has increased and the percentage of available housing stock in the area is less than 5%. I am satisfied that the analysis and conclusions of the planning authority are both reasonable and satisfactory to support the establishment of a VSR and consequently I find that there was and is a need for housing in the area in which the site is located.

- 7.3.3. Secondly, in relation to the suitability of the site for the provision of housing, section 6(5) of the 2015 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.

- 7.3.4. The appellant raises no substantive issue in relation to the condition of the site and the provision of housing, but rather, bemoans the fact that the entire site is not zoned for residential uses and that this alone affects the viability of a comprehensive development proposal. However, the owner has indicated an intention to develop the lands in the near future. I note that the Development Plan for the area is under review and that the owner appears to have engaged with the planning authority to amend the extent of residential zoning. Irrespective of the owner's intentions for future development and a change in zoning to the balance of land in the appellant's ownership, the site is suitable for housing as demonstrated by the current land use zoning and the provision of relatively recent housing development in the vicinity.

7.4. Other Issues

- 7.4.1. The appellant raised an issue in relation to boundary complications and a legal dispute with a neighbour. The vacant site boundaries have been drawn to accord with the zoning of the lands in question. The Land Registry Map submitted by the owner shows a slight indentation running along a portion of the south eastern

boundary corresponding to a neighbouring property. The planning authority dismiss this as immaterial in the context of the wider site. In my view, land ownership queries and the possibility of a lack of notification to all landowners could present difficulties for the Board in coming to a determination. For this reason, I have recommended in the past, a cautionary approach; cancel the entry and the planning authority recommence the process for registration. In this instance, there are two aspects in play. Firstly, the portion of land in dispute is minimal in terms of the wider landholding and this may result from an inconclusive land registry map in terms of boundary or extent. Secondly, the appellant indicates a wish to resolve the issue in their favour, though it may take some time. In my mind, there is minimal doubt over the ownership of the majority of the lands, therefore the site should logically remain on the register as entered. It may transpire that the legal issues are resolved in time and this may impact on the valuation of the land, the calculation of levy and to whom it is charged. I am satisfied that these other matters do not concern whether the site should remain on the register.

- 7.5. The placement of a site on the register requires three criteria to be fulfilled under section 5(1)(a)(i), (ii) and (iii) of the 2015 Act. I am satisfied that the site was and is a vacant site and the site should remain on the register as all three requirements under section 5(1)(a) of the 2015 Act (as amended) have been met.

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 confirm the Notice stating that the site at Strandhill Road, Knappaghmore, Sligo was a vacant site for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 19 December 2018 shall be deemed to take effect from that date.

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) That the site was a vacant site by virtue of the lack of any discernible use having taken place during the period prior to the entry of the site onto the VSR, the need for housing in the area, the site was and is suitable for the provision of housing as demonstrated by the residential land use zoning for the area, and that insufficient reason is put forward to cancel entry on the Vacant Sites Register

the Board is satisfied that the site was a vacant site for the relevant period.

Stephen Rhys Thomas
Planning Inspector

08 May 2019