



An
Bord
Pleanála

Inspector's Report

ABP-303559-19

Type of Appeal	Section 9 Appeal against section 7(3) Notice
Location	LDR 10 west of Drehidnagower Bridge, Ennis, Co. Clare
Planning Authority	Clare County Council
Planning Authority VSL Reg. Ref.	VSR14
Site Owner	Al Callinan and Gerry Walsh
Planning Authority Decision	Place on Register
Date of Site Visit	31 st May 2019
Inspector	Joanna Kelly

1.0 Introduction

- 1.1. This appeal refers to a section 7(3) notice issued by Clare County Council dated 3rd January 2019 with the Register stating that the site was placed on same on 21st December 2018. The Notice states that it is the Council's intention to enter a site at LRD 10 west of Drehidnagower Bridge, 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. Folio no. CE35230F applies to the site.

2.0 Site Location and Description

- 2.1. The site is located to the west of Ennis Town centre along Drumcliffe Road which leads to the Lahinch Road. No area is provided in the documentation. The site broadly comprises of scrub on a parcel of land bounded by the Drumcliffe Road to the north and west. The river Fergus is located to the east of the site. The site is adjoined to the south by the Lenabeg housing estate which has an access from Drumcliffe Road. There is currently a fence to the perimeter of the site along Drumcliffe road. There are also overhead powerlines that traverse the site and run in an east – westerly direction.

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 3rd 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 21st 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 low density residential development in the Clare County Development Plan 2017-2023 within the Ennis Municipal District in the neighbourhood of Lifford which is addressed at Section 2.6 of the Plan. This zoning refers to the use of lands to accommodate a low-density pattern of residential development, primarily detached family homes. Section 16.2.8 of the Plan refers to lands identified as areas on which the Vacant Site Levy can apply with site LDR10, west of Drehidnagower Bridge 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 LDR 10 lands west of Drehidnagower Bridge specifically included.

4.0 **Planning History**

None noted

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 there is no planning history and notes that a site inspection was carried out on 17 October 2018.
- In respect of ownership it refers to folio no. CE35230F which applies to the site. 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 person's 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 purposes of the act and with reference to the core strategy, public infrastructure and its physical condition. It is stated that the site is deemed to be a vacant site as per Section 5(1)(a) of the Urban Regeneration and Housing act 2015 as amended. The site is deemed suitable for inclusion on the Register.
- A section 7(1) notice was issued on 8th November 2018 to two site owners which I note also refers to regeneration lands as well as residential.
- A second report dated 18 December 2018 states that having regard to the lack of any submission in accordance with section 7(1) of the Urban Regeneration and Housing Act 2015 as amended that the site be entered onto the Register.

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 two owners.

6.0 The Appeal

6.1. Grounds of Appeal

An appeal was received from Ignatius T Greaney on behalf of Al Callanan and Gerry Walsh which is summarised as follows:

- Acknowledge that the site is in an area where there is a need for housing
- Not conclusive that the site is suitable for housing for the following reasons:
 - (a) The Strategic Flood Risk Assessment attached to the CDP sets out in page 123 Flood Zones, A, B and C in relation to the said site. It has been confirmed that a justification test was applied to the site and Zones A and B failed the test thereby making them (c. 50% of the site) unsuitable for development. Consequently, the site is not suitable for housing.
 - (b) The remaining 50% of the site is zoned LDR. When the building lines of both roads are taken into account there remains very little land for development at low density.
- Request that the site be removed from the register

6.2. PA response to Grounds of Appeal

- The subject site is zoned for Low Density Residential Development as per the provisions of the Clare County Development Plan 2017-2023 and is considered to be a vacant site in accordance with section 5(1)(a) and 6(4) of the Urban Regeneration and Housing Act 2015.

- Notwithstanding the existence of flood zones on part of the site, a large part is considered suitable for the provision of housing and accordingly zoned for the provision of Low Density Residential development.
- A justification test was applied to the site and the area designated as Flood Zone C passed the test. The flood zone a and B lands are to be used as public open space. An extract from the Strategic Flood Risk Assessment as carried out as part of the Clare County Development Plan 2017-2023 is enclosed.
- Request that the decision to place on Register is upheld.

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.

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 20th December 2018 with the Notice dated 3rd January 2019 meaning that the relevant 12 month period would have commenced on 21st 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 7 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 21st 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 Planning Authority 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 has included this reason in their decision to cancel such Notices in a number of other instances.

7.2. Notices to relevant Landowners

The documentation submitted from Clare County Council indicate that one folio pertains to the lands identified as VSR 14 or LDR 10 west of Drehidnagower Bridge. There are two landowners. I note that the one notice appears to have been served in both names. The Board may wish to consider the appropriateness of this and whether both landowners should have been served separate notices. In any event, the grounds of appeal received is on behalf of both landowners implying that both landowners received notification/are aware of the entry onto the register of the lands in question.

7.3. **Housing Need**

7.3.1. 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 assessment indicates that the Core Strategy of the Clare CDP 2017-2023 estimate the population of Ennis in 2023 to be 33,497 people. This represents an increase of 3,166 households over the plan period based on a household size of 2.5 persons. The Housing Strategy identifies a need for 3,211 new houses to be delivered for Ennis by 2023 which is at variance to the number set out in the Core Strategy section. The Housing Section of Clare County Council confirm that the total households currently seeking social housing support in Ennis is 1,078. A section of the assessment deals with housing availability and indicates that the number of habitable houses available for purchase or rent is less than 5 per cent of the total number of houses in the area. The assessment also sets out the average monthly rent and average house price in Clare. In general, having regard to the provisions of section 6(4) of the Act I consider that there is sufficient evidence to determine that there is a need for housing in the area. The landowners also accept in the grounds of appeal that there is a need for housing.

7.4. **Suitability for Housing**

(a) The Core Strategy

The subject lands are zoned for residential development in the Clare County Development Plan 2017-2023. They are located in an established urban area and are the last portion of lands to be developed between the Lenabeg housing development and the Drumcliffe Road. I consider that the proposed site is consistent with the provisions of the core strategy and represents a sequential approach to development.

(b) Whether the site was served by the public infrastructure and facilities (within the meaning of section 48 of the Act 2000) necessary to enable housing to be provided and serviced.

This matter is not expressly dealt in the appeal or the planning authority's documentation. However, I note that the lands immediately adjoin the Lenabeg housing estate which are served by public infrastructure. There lands are also bound to the north and west by the Drumcliffe Road providing access to the site. I am satisfied that the site is served by adequate public infrastructure necessary to enable housing to be provided and serviced.

(c) Whether there was anything affecting the physical condition of the land comprising the site which might affect the provision of housing

The grounds of appeal set out that over 50% of the site is located within Flood Zone A and B. While I note that this would appear to be the case, a justification test was carried out as part of the development plan process and this portion of the site was designated as being suitable for open space which would serve housing that could be constructed on the remaining portion of the lands. The appeal indicates that having regard to the established building lines that the remaining portion would be severely impacted upon. The lands are zoned and while a site-specific flood risk assessment would be required, I do not consider that such would preclude development on the Flood Zone C lands. I also do not consider that the existing pattern of development in the area would preclude the provision of housing on the lands as put forward in the grounds of appeal. I note that there are overhead electricity lines traversing the site, however, given the absence of documentation to the contrary, I consider that these may be undergrounded/re-routed.

7.5. Vacant or Idle/Purpose of the Lands

7.5.1. 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—

(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.”.

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

7.6. Vacant or Idle

- 7.6.1. The appellants have not addressed whether the site is considered vacant or idle but rather focus on the unsuitability of the site for development. 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.

7.7. Purpose of the Lands

- 7.7.1. 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.”.

- 7.7.2. I note that the appellant does not claim that the site is being used for any specific purpose. Pursuant to my site inspection, it would appear that the lands in question are not being used per se in that there are no structures or agricultural uses evident.

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 (VSR14) site at Drehidnagower Bridge, Ennis, Co. Clare was vacant or idle for the 12 months

concerned. Therefore, the entry on the Vacant Sites Register on the 20th December 2018 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,

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.

Joanna Kelly
Senior Planning Inspector

19th June 2019