



An
Bord
Pleanála

Inspector's Report

ABP-303571-19

Type of Appeal	Section 9 Appeal against section 7(3) Notice
Location	LDR 20 opposite Cuirt na Fhile, Millbank, Ennis, Co. Clare
Planning Authority	Clare County Council
Planning Authority VSL Reg. Ref.	VSR16
Site Owner	Desmond Brennan
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 20th December 2018. The Notice states that it is the Council's intention to enter a site at LRD 20 opposite Cuirt na Fhile, Millbank, Ennis, Co Clare on to the Vacant Sites Register (VSR) under Reference VSR 16, 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.

Folio no. CE8389F applies to the site.

2.0 Site Location and Description

- 2.1. The site is located to the eastern end of Ennis Town centre in an area known as Millbank off the Tulla Road opposite Cuirt na Fhile estate. No site area is provided in the documentation. The site is bounded by residential uses to the north, south and west and a road to the east. There is an existing workshop structure to the northern end of the site. Access to the lands is via an existing entrance to the southern end of the site. The lands rise from east to west. There is evidence of waste materials and debris about the site.

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**

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 Roslevan which is addressed at Section 2.3 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 LDR20, opposite Cuirt na Fhile 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 20 lands opposite Cuirt na Fhile specifically included.

4.0 **Planning History**

File Ref. No. 10-21086 Extension of duration of planning ref. 04/66 to construct mixed-use development consisting of restaurant/pub and off-licence, shops and 3 no. apartments and associated site work. Permission expired on 11th October 2014.

File Ref. No. 04/66 (new reference no. 04/21066) Permission granted 7th September 2005 to Des Brennan for missed use development consisting of restaurant/pub and off-licence, shop and 3 no. apartments and associated site works.

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 of planning history and notes that a site inspection was carried out on 17 October 2018.
- In respect of ownership it refers to folio no. CE8389F 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 low density 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 site owner 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**

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 Desmond Brennan which is summarised as follows:

- An email was previously sent to the Council which was outside the required response period setting out why the property should not be included on the register.
- Owned the property for 40 years.
- Applied for permission for workshop and have been using it as a hobby space for over 35 years and use the adjoining field as a garden for beehives.
- Permission was granted on site for a commercial development which was never built due to the downturn in the economy.
- Does not consider the site vacant/disused and Gardai have been called on numerous occasions due to break-ins.

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.

- Acknowledge that emails were received but were outside the time-frame for appeal and the details provided in this correspondence are relevant in terms of the use of the site.
- Council appreciates the appellant's position on this matter and the Council will monitor the site and if at any time the Council is satisfied that it is no longer a vacant site reconsideration can be given to the entry on the register in respect of the site.

6.3 Appellant's response to the Planning Authority's Response

- Reiterates points already raised in that appellant uses the workshop on daily basis and keeps beehives on site.
- The workshop has electric power and pays an Esb bill for this connection.
- Workshop was constructed in approx. 1987 with planning permission granted in 1986.
- Has engaged a consulting engineer to determine type of housing/density that would be allowed on site.
- Does not feel that the property should be entered on the Vacant Sites register.

This response was circulated to the PA who indicated that they had no further comments to make.

7.0 **Assessment**

7.1. **Process**

7.2. There are a number of matters of process which I propose to address. Firstly, the matter of the 12 month period.

12 Month Period

7.3. 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.

- 7.4. 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.

Housing Need

- 7.5. 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.

7.6. **Suitability for Housing**

(a) The Core Strategy

The subject land is zoned for residential development in the Clare County Development Plan 2017-2023. It is located in an established urban area adjoining existing residential developments. I consider that the land is consistent with the provisions of the core strategy and represents an infill 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 existing residential developments which are served by public infrastructure. There is an existing access from a public road serving 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

There is nothing which would in my opinion affect the physical condition of the land comprising the site which might affect the provision of housing.

7.7. Vacant or Idle/Purpose of the Lands

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.

Vacant or Idle

- 7.7.1. The appellant has considered that the workshop which he uses could not be considered vacant. 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. Furthermore, having regard to the planning history pertaining to the site as set out by the appellant it is questionable as to whether the site constitutes a vacant site. Permission was granted to the appellant for a workshop in the 1980s which he states he as used since that date. While the site is underutilised, I am not convinced that it is vacant given that it is utilised for the purposes for which permission was granted.

Purpose of the Lands

7.7.2 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.”

I note that the lands are being used as a workshop and for the keeping of bees as set out by the appellant in this instance. While no planning permission has been cited for the workshop, the appellant indicates that permission was sought and the workshop constructed in 1987. Since that date he has used the lands/workshop and continues to do so on a daily basis. There are no details available as to when the subject lands were zoned for residential purposes. It is possible given the length of time that the appellant has owned the lands that they were not zoned for residential purposes when purchased and the amending section 63 (II) may be applicable in this instance. Given the absence of 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 on the register, I do not consider it appropriate to pursue this issue further at this time, however if the planning authority considers recommencing the process, that consideration should be given to Section 5(iii) of the Urban Regeneration and Housing Act 2015 as amended by Section 63 of the Planning and Development (Amendment) Act 2018.

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 entry on the register of site (VSR16) site at, Opposite Cuirt na Fhile, Millbank, 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

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) planning history pertaining to the site as outlined by the appellant,
- (d) 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 current continued use of the workshop on site by the appellant, and
- (f) the provisions of section 5(iii) of the Urban and Regeneration and Housing Act 2015 as amended by Section 63 of the Planning and Development (Amendment) Act 2018

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