



An
Bord
Pleanála

Inspector's Report

ABP-303696-19

Type of Appeal	Section 9 Appeal against section 7(3) Notice
Location	LDR 64 Tulla Road, Ennis, Co. Clare
Planning Authority	Clare County Council
Planning Authority VSL Reg. Ref.	VSR17
Site Owners	Padraig Howard and Evan Duggan
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 the site at LRD 64, Tulla Road, Ennis, Co Clare has been entered on to the Vacant Sites Register (VSR) under Reference VSR 17, 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.

Folios no's CE3567, CE43133F, CE52158F apply to the site. The lands are owned by two different persons, Mr. Evan Duggan and Mr Padraig Howard.

2.0 Site Location and Description

- 2.1. The site is located to the eastern end of Ennis Town centre with an access off Tulla Road which is located east of the M18 junction 13 exit. No site area is provided in the documentation. The site is an irregular shape and consist of backlands bounded by residential uses to the north and east. Tulla Road is characterised predominantly by detached bungalow/dormer housing. The Hillcrest estate is located to the east. The south and western boundaries bound greenfield sites. It is noted that there is a drainage channel to the eastern boundary of the site and the land is significantly overgrown. There are large pipes evident on site suggesting the site has been disturbed overtime. There is evidence of a track from Tulla Road through 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 Planning Authority 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. Two Notices dated 3rd and 14th January 2019 were issued to Padraig Howard as the first was returned by An Post to the Council was the correspondence was not collected. Each notice was 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. I note that there is no documentation on file from the Council which confirms that notices were issued to Evan Duggan. An email 14/02/2019 from ABP to Clare County Council sought letters to the landowners. There is no correspondence on file from Evan Duggan.

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 LDR64, 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 64 zoned land on Tulla Road specifically included.

I note that the planning authority has referred to the address as Tulla Road. The Ennis Municipal Plan in section 1.6.4 refers to LDR64 lands at Tulla Road however, section 2.3 refers to Site LDR64 noting the address as Anstand Gaurus/Ballymacahill. The appellant in this instance has also raised issue regarding incorrect address.

4.0 Planning History

File Ref. No. 10/21096 An extension of the duration of the planning permission that was granted under ABP PL.130815 for the construction of 190 houses. This permission expired on 17th October 2018.

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 the lands being owned by two people Mr. Evan Duggan with folio no. CE8389F and CE43133F applying to the land. Mr Padraig Howard owns the lands with Folio no. CE52158F applying. 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 no written submission under section 7(1) of the Urban Regeneration and Housing Act 2015 as amended was received and that 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.

6.0 The Appeal

6.1. Grounds of Appeal

An appeal was received from McCarthy Keville O'Sullivan on behalf of Padraig Howard which is summarised as follows:

- Appeal two notices received from Clare County Council (Site ref. Clare VSL 10 and VSR17) relating to landholdings at Tulla Road, Ennis.
- The landholding in question is made up of 3 no. seperate land registry folios (CE2158F, CE3567 and CE43133F).
- It is set out that Folios CE3567 and CE43133F are not in the ownership of Padraig Howard and it is considered that the notice issued by Clare County Council in respect of VSL 17 is invalid and for this reason should be withdrawn.

- The only lands in the ownership of Padraig Howard are Folio CE52158F and it is noted that the landholding addresses specified by the Planning Authority in their correspondence are incorrect.
- The lands CE52158F were purchased in 2007 and are in negative equity.
- This situation would be exacerbated by the levying of a charge by the planning authority.
- There are significant site-specific development constraints which make the delivery of housing difficult.
- The lands are located immediately adjacent to the Fluvial Flood Extents and the potential effect of this flood risk zoning designation will require careful investigation before a development proposal can be brought forward.
- This designation adds a level of risk to any development proposal on the lands both in terms of actual flood risk but also concerns relating to drainage and servicing of the site.
- In order to access the lands from the existing vehicular access it will be necessary to traverse an area of land zoned 'Open Space'.
- The zoning matrix indicates that this would 'not normally be permitted'.
- It should be noted that a submission was made during the preparation of the current development plan seeking a corridor of residential zoning to facilitate a vehicular access to the subject lands but this zoning amendment was not facilitated.
- There is a development objective in the CDP stating that the subject lands should be accessed via the existing residential development to the west. These lands are not in the ownership of the Mr. Howard and the existing road is not taken in charge.
- The lands forms part of a wider landholding not in the ownership of Mr. Howard and it is considered that they should be developed as a whole in order to ensure the most efficient and sustainable development proposal for the wider site.
- The lands are zoned 'low density residential' which the CDP outlines as being suitable for development at a density of 5 units per hectare, the designation of which is at odds with national guidance.

- It is considered that the lands do not warrant inclusion on the Vacant Sites Register and request that this position be confirmed.

The Board should note that there are two parcels of land that form part of the Folio CE52158F, one parcel pertains to this VSL and the other pertains to lands further east which form part of VSR10 however the grounds of appeal would appear to pertain to both parcels of land comprising the one folio, consequentially some points raised in the grounds of appeal are not of relevance to these VSR lands.

6.2. PA response to Grounds of Appeal

It is noted that the Planning Authority indicate that the response refers to both File Ref. No. ABP303690 and ABP303696 even though they are different parcels of land pertaining to different Vacant Site Registry entries.

- The subject site is zoned for low density residential development as per the provisions of the Clare County Development 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.
- The appellant's points in terms of the subject vacant site being within three different land registry folio details are noted and notifications in terms of the provisions of the Act of 2015 were sent to all the relevant landowners.
- Zoning and negative equity issues are not a matter for consideration.
- As per the Strategic Flood Risk Assessment of the Clare CDP, part of this site is designated as being within Flood zone B and the site is adjacent to lands designated as Flood zone A. This does not preclude residential development on the entire area of the site.
- The SFRA noted that "the site is largely located within Flood Zone C, with encroachment of Flood Zone B in the northern section of the site as flood waters backs up from the south-west. Provided finished floor levels are above approx. 5mOD the site can be developed with low density residential development in Flood Zone C. The area within Flood Zone B failed the justification test and must be used for water compatible uses only.

- The careful investigation in terms of flood risk is a challenge however it does not represent anything affecting the physical condition of the land of which this site is comprised which might affect the provision of housing.
- Land owners dissatisfaction with a land use zoning is not considered sufficient grounds on which to deem a site not to be vacant.
- The Council appreciate the landowner's position and will monitor the site and if at any time the Council is satisfied that the site is not longer a vacant site, reconsideration can be given to the entry on the register in respect of that site.

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 and notices to relevant landowners.

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.

7.5. **Notices to relevant Landowners**

The documentation submitted from Clare County Council indicate that three folios pertain to the lands identified as VSR 17. However, a copy of the notices on the file only confirm that one landowner, Mr. Pdraig Howard was issued with the relevant notices. ABP sought via email the letters to the landowner that advised them that the lands are to entered onto the Vacant Site Register. A response via email was received (and is on the file) indicating that the section 7(1) notices dated 8/11/2019 advised landowner of intention to enter on the register and section 7(3) notice dated 14/01/2019 advised landowner that they have entered on the register to which they could appeal. Copies of section 7(3) were attached. While the correspondence from ABP could have been more explicit in seeking all correspondence to all registered owners notified, I consider that pursuing this matter at this point is futile having regard to the recommendation above to cancel the notice on the basis of the defect in the 12-month period. It is also considered that the grounds of appeal pertaining to

the placing of the site on the register should have been circulated to all registered landowners in the interests of natural justice.

I therefore consider that in the absence of the required notices having being on both landowners i.e. Mr. Evan Duggan and Padraig Howard that the entry onto the register should be cancelled. It is open to the Council to re-start the process ensuring all relevant landowners are served the required notices.

Housing Need

7.6. 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.

7.7. **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/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 existing residential developments which are served by public infrastructure. I note that the landowner raises concerns about provision of a vehicular access to the site over lands that are zoned open space. I do not consider that this is the case in respect of the lands that are identified as site LDR64/VSR17. Pursuant to site inspection, there is an existing entrance off the Tulla Road serving these lands and while I accept that the landowner in this instance may not have control over access to his portion of the lands comprising LRD 64, I am satisfied that the site is served by adequate public infrastructure including an opportunity for access necessary to enable housing to be provided and serviced and that the issue of access does not preclude the development of the site.

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

I accept that the site characteristics are such that a site specific flood risk assessment will be required, however the provision of such and an appropriate design response would not in my opinion preclude the provision of housing on the site.

7.8. 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

- 7.8.1. The appellant does not contend that the site is not vacant or idle. However, 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.

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 details on file indicate that the landowner purchased the lands in 2007 which is considered to be after the subject lands were zoned.

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 (VSR17) site at, Tulla Road, 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) 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, and

(e) the absence of documentation demonstrating that all registered landowners in respect of the lands LDR 64 at Tulla Road were notified as required

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

18th June 2019