



An
Bord
Pleanála

Inspector's Report ABP-304152-19

Type of Appeal	Section 9 Appeal against Section 7(3) Notice
Location	Lands North West of Fana Bui, Ballymoneen Road, Galway
Planning Authority	Galway City Council
Planning Authority VSL Reg. Ref.	No:011west
Site Owner	Cairn Homes Properties Ltd.
Planning Authority Decision	Place on Register
Date of Site Visit	16th December 2019
Inspector	Erika Casey

1.0 Introduction

- 1.1. This appeal refers to a Section 7(3) Notice issued by Galway City Council, stating their intention to enter a site referred to as lands north west of Fana Bui, Ballymoneen Road, Galway onto the Vacant Sites Register (VSR) 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 5(2) of the URH Act 2015.
- 1.2. The appeal site registered under VSL reference No:011west, has one stated registered owner, Cairn Homes Properties Ltd.

2.0 Site Location and Description

- 2.1 The subject site is located on the western side of Ballymoneen Road. The site is greenfield in character. The Fana Bui residential development is located to the south. A number of detached dwellings are located to the north, east and west of 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) and 5(2) of the Act. The Notice is dated the 12th March 2019 and is accompanied by a map outlining the extent of the site to which the Notice relates.
- 3.1.2. Section 5(1)(a) of the Act stated that a site is a vacant site if, in the case of a site consisting of residential land:-
 - (i) the site is situated in an area in which there is a need for housing,
 - (ii) the site is suitable for housing, and
 - (iii) the site, or the majority of the site, is vacant or idle.
- 3.1.3. It is noted that Section 5(1)(a)(iii) has been amended by Section 63 of the Planning

and Development (Amendment) Act 2018 which commenced upon coming into effect of the Act (19 July 2018). 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”.

3.1.4 The Act defines ‘residential’ land at Section 3 as follows:

“residential” land means land included by a planning authority in its development plan or local area plan in accordance with section 10(2)(a) of the Act 2000 with the objective of zoning for use solely or primarily for residential purposes, and includes any structures on such land.”

3.1.5 Section 5 of the Act defines a site for the purpose of the application of the vacant site levy as:

“any area of land exceeding 0.05ha identified by a planning authority in its functional area but does not include any structure that is a person’s home.”

‘Home’ is defined as:

“A dwelling in which the person ordinarily resides (notwithstanding any periods during which the dwelling is vacant) and includes any garden or portion of ground attached to a usually occupied with the dwelling or otherwise required for the amenity of convenience of the dwelling.”

This applies whether the property is owner occupied or rented i.e. tenure neutral.

3.1.6 Section 6(4) provides that a planning authority, or the Board on appeal, shall determine whether or not there was a need for housing in an area within the planning authority’s functional area for the purposes of this Part by reference to—

- (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.

3.1.7 Section 6(5) provides that 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 anything affecting the physical condition of the land comprising the site which might affect the provision of housing.

3.1.8 Section 9 relates to appeals against entry on the register of vacant sites. Section 9(2) provides:

“On an appeal under this section the burden of showing that the site, or a majority of the site, was not vacant or idle for the duration of the 12 months concerned is on the owner of the site.”

3.2. **Development Plan Policy**

3.2.1. The subject site is located in the administrative area of Galway City Council. The operative development plan is the Galway City Development Plan 2017-2023.

3.2.2 Under the plan, the subject site is zoned Residential: *To provide for residential development and for associated support development, which will ensure the*

protection of existing residential amenity and will contribute to sustainable residential neighbourhoods.

3.2.3 Under the Core Strategy, it is stated that the population target for the City is 98,700 persons by 2022. It is anticipated that there will be a need for 8,245 housing units to meet the needs of the population target by 2023. Of the overall households, 5,706 are estimated to be in need of social housing.

3.2.4 Reference to the vacant site levy is set out in section 2.2 of the Development Plan. It states:

“The Urban Regeneration and Housing Act 2015 allows for the implementation in 2018 of a vacant site levy to be paid by the owner of a registered vacant site. The levy is intended as a mechanism to incentivise the development of vacant sites, enabling them to be brought into beneficial use or encouraging their sale to those who have an interest and resources to develop. Monies raised from the levy will be required to be spent on housing or public improvements in the vicinity of the site. In this regard the Council will commence in 2017 the preparation of a vacant sites register for the city in accordance with the Urban Regeneration and Housing Act 2015 and 2016 DECLG guidance.”

4.0 **Planning History**

4.1 There have been two previous applications on the site.

Planning Authority Reference 06/481

4.2 Permission granted in February 2007 for a development of 210 residential units, crèche, doctor’s surgery and 2 commercial units.

Planning Authority Reference 07/346

4.3 Permission granted in July 2007 for 5 no. additional two storey detached houses with attic development, 2 no. additional 2 bedroom apartments and revised house types.

5.0 Planning Authority Decision

5.1. Planning Authority Reports

5.1.1 A Vacant Site Report was prepared for the site outlining the dates of the visits to the site which were the 19th of December 2016 and the 5th of December 2018, description of the area, zoning, planning history and the type of site for the purposes of the Act which in this case is 'Residential'.

5.1.2 In terms of need for housing (tests outlined in Section 6(4)), it is stated that the site is situated in an area in need of housing and which is suitable for same and having regard to the vacant nature of the site, it is considered appropriate to include this site on the register.

5.1.3 Further information was requested from the Council to indicate that there is a demonstrable need for housing in the area which the site is situated. A response was received on the 28th of November 2019. This details:

- Housing supply remains below demand requirements in spite of the current upturn in construction and increased in planning permission granted. The scale of unmet housing needs has grown over the period of the previous and current City Development Plan and requires an increase in housing output.
- In total, Galway City has lands zoned capable of delivering an estimated 9,093 units. The Housing Strategy projects, in accordance with the population targets defined by the NSS, that Galway's population would reach 98,700 people by 2022.
- More recent analysis based on Census 2016 data and the NPF population targets indicates Galway's population is likely to reach between 90,660 and 97,870 by 2026. This is between 15.3% and 24.4% increase on the 2016 population and is estimated to generate a minimum housing requirement of at least 8,160 additional housing units by 2026.
- CSO data indicates that just 563 new homes have been completed in Galway City from 2016 to Q3 2019. Galway City is currently experiencing a significant housing supply deficit.
- Housing affordability is a significant issue. The Daft.ie Rental Price Report – An

Analysis of Recent Trends in the Irish Rental Market Q3 2019 states that the average rental price in the city is €1,299. This is an annual year on year increase of 5.9%.

- There are currently 4,389 households on the waiting list. In Q3 2019, 2,613 households specified a preference for the west side of Galway as an area of choice. The subject lands are located on the west side of the City.
- The total habitable housing stock in Galway City is 30,681 units (census 2016). Data from Daft.ie indicates that there are 338 housing units available for sale and rent in Galway City. This equates to approximately 1% of the total habitable housing stock.

5.2 Planning Authority Notice

5.2.1 Planning Authority decided under Section 7(3) to issue a Notice on the 12th March 2019 referencing Sections 5(1) and 5(2) of the Act and stating that the site has been entered onto the Vacant Sites Register. The notice was issued to Cairn Homes Properties Ltd. Prior to this, a Notice of Proposed Entry on the Vacant Sites Register was issued on the 14th January 2019.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1 An appeal was received from Cairn Homes Plc on the 3rd of April 2019 which can be summarised as follows:

- Consider that the subject lands were not idle over the course of the last 12 months. Notes that the site forms part of a larger landholding in their ownership on the western side of the Ballymoneen Road (c. 2.6ha) and that Cairn Homes are currently preparing a planning application for these lands through the SHD process.
- State that Galway City Council have failed to acknowledge the full extent of Cairn Homes ownership and how it is intrinsically linked to the N6 Galway City Ring Road Motorway Scheme 2018 and the N6 Galway City Ring Road

Protected Road Scheme 2018.

- Notes that Cairn Homes have made a submission on the CPO process relating to the proposed N6 Ring Road (copy enclosed with appeal). The route of the road bisects the northern section of the subject site and, therefore, Cairn Homes cannot advance a planning application until the detailed design of the proposed road is established. Site access, layout and servicing are dependent on the detailed design of the road.
- State that Cairn Homes have been actively engaging with the City Council regarding the ring road design details. Submit that to progress this site in isolation and without stakeholder engagement would constitute unsustainable, piecemeal development, contrary to planning policy.
- Note that Cairn Homes have been proactive in progressing the future development of the site and have carried out a number of assessments. State that it takes significant investigation, assessment and design to progress a residential development of this scale through the planning process.
- The continuing uncertainty surrounding the N6 Galway City Ring Road has delayed design progress on the site. Cairn Homes have proactively been progressing a masterplan for the site and it cannot be described as idle.

6.2. Planning Authority Response

6.2.1 A response to the appeal was received from Galway City Council on the 29th of April 2019 and can be summarised as follows:

- The appellant contends that in serving Section 7(1) Notice of Proposed Entry on the Vacant Sites Register that the City Council has failed to acknowledge the full extent of land in the ownership of Cairn Homes. Having regard to the definition of vacant or idle site under section 5 of the Act, the scope of the definition of a vacant site is not restricted by land ownership or extent of ownership.
- The core strategy commits to the preservation of the N6 Galway Ring Road (GCRR) route corridor and the associated land requirements taking priority over

other land uses and objectives. All of the identified vacant sites were assessed in the context of the Core Strategy and the associated land reservation of N6 GCRR route corridor.

- A number of criteria were considered for each site including factors such as zoning, sequential location, development plan objective etc. The subject site was ranked within the first tranche of 15 sites to be considered for placement onto the Vacant Site Register.
- State that it is clear that Cairn Homes have sufficient information to allow them to advance a planning application on the subject lands. Cairn Homes have been provided with the details of the access and attenuation facilities for the proposed ring road. Note that a report from ARUP details the nature of the access provided to the site and how the site could advance simultaneously with the road development and that neither is dependent on the other. The ARUP Report acknowledges that the Cairn Home landholding is accessible via this site and adequate sightline and visibility splays for access have been provided.

6.3 Further Responses

6.3.1 A further submission by Cairn Homes Properties Limited commenting on the Local Authority's Response to Appeal was received on the 29th of May 2019 and can be summarised as follows:

- Feel that the response of the Local Authority is unsatisfactory and fails to take into account a developer's obligation to carry out comprehensive due diligence and stakeholder dialogue in advance of a large scale planning application.
- There is continuing uncertainty surrounding the N6 Galway City Ring Road Protected Scheme, despite the local authority stating otherwise. This is currently with An Bord Pleanála's Strategic Infrastructure Division for determination. Therefore, the design process has been delayed, despite a proactive approach in undertaking impact studies and engaging with all relevant parties. To progress a planning application prior to the permitted road design would result in isolated, piecemeal development.

6.3.2 No further response was received by Cairn Homes Properties Ltd in relation to the Council's submission regarding Section 6(4) of the Urban Regeneration and Housing

Act 2015 received on the 28th of November 2019.

7.0 Assessment

7.1. Introduction

7.1.1. This notice has been issued under the provisions of Section 5(1)(a) of the Act which relates to 'Residential' lands. Section 5(1)(a) of the Act states that a site is a vacant site if, in the case of a site consisting of residential land:-

- (i) the site is situated in an area in which there is a need for housing,
- (ii) the site is suitable for housing, and
- (iii) the site, or the majority of the site, is vacant or idle.

7.1.2. As I note above, Section 5(1)(a)(iii) has been amended by Section 63 of the Planning and Development (Amendment) Act 2018 which commenced upon coming into effect of the Act (19 July 2018). 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".

7.1.4 I will consider the vacant site in accordance with the criteria set out under section 6(4) and 6(5) of the Act. I will then assess whether the site is vacant/idle having regard to the appellant's submission that the lands cannot be considered idle as Cairn Homes have been proactively progressing a masterplan for the site and that development cannot proceed pending the outcome of the N6 Galway City Ring Road Motorway Scheme. Firstly however, I will consider the procedural matter of the adequacy of the Galway City Development Plan and its objectives regarding the

vacant site levy.

7.2 Procedural

7.2.1 Section 28 of the Act amends section 10(2) of the Act to require a mandatory objective in development plans to support regeneration. Circular letter PL 7/ 2016 provides the following guidance:

“As part of the Urban Regeneration and Housing Act 2015, section 10(2)(h) of the Planning and Development Act 2000, as amended, has been further expanded – see Appendix 1 for further elaboration. This section of the Planning Act requires a mandatory objective to be included in a development plan to support urban regeneration. In light of this revision, planning authorities are required to examine their current development plans with a view to ensuring that the revised requirements of section 10(2)(h) have been integrated into their development plans. In this regard and as part of this examination, planning authorities should in the first instance provide for the development of vacant sites in designated areas (“residential land” and/ or “regeneration land”) as an explicit objective in their development plans or local area plans, supporting their core strategies in their development plans. This is to give a clear foundation to the fair and equitable application of the levy in their respective functional areas.

The areas designated in a development plan or, where appropriate, a local area plan for the purposes of the levy can be indicated by –

(i) designating specific “residential land(s)” in areas zoned primarily as residential or specific “regeneration land(s)” in areas zoned primarily for regeneration as areas in which the levy can be applied on vacant sites in those areas, or

(ii) designating all lands in an area which are zoned for residential or regeneration uses as areas in which the levy can be applied on vacant sites.”

7.2.2 It is further stated that a planning authority may choose the most appropriate plan for identifying areas to which the vacant site levy will apply - County/City Plan or Local Area Plan. However, the County/City Plan must clearly articulate policy relating to the revised section 10(2)(h). In summary, the planning authority shall include objectives in its development plan for the development and renewal of identified areas in need of regeneration or residential development. It will be a matter for the

elected members to identify and incorporate those areas in their development plan or local area plan. Only vacant sites and structures located in those areas, as incorporated in the development plan, can be placed on the vacant site register and be liable for the levy.

7.2.4 I have reviewed the statutory development plan for the area which is the Galway City Development Plan 2017-2023 and subsequent variations to the plan. I have also reviewed the vacant site register. I can find no reference, objective or policy providing for the development of vacant sites in designated areas (“residential land” and/ or “regeneration land”). I note however, that notwithstanding the guidance set out in the Circular, Section 3 of the Urban Regeneration and Housing Act 2015, defines ‘residential’ as follows:

“residential land” means land included by a planning authority in its development plan in accordance with section 10(2)(a) of the Act 2000 with the objective of zoning for such use or primarily for residential purpose, and includes any structures on such land.

7.2.5 In this instance, the subject site is zoned Residential. On balance, notwithstanding the absence of an explicit objective in the Development Plan, I am satisfied that as the lands are zoned Residential in accordance with section 10(2)(a) of the Act that the vacant site levy can be applied to the subject lands.

7.3 The Need for Housing

7.3.1 Section 6(4) provides that a planning authority, or the Board on appeal, shall determine whether or not there was a need for housing in an area within the planning authority’s functional area for the purposes of this Part by reference to—

(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 As noted above, it is identified in the core strategy in the Galway City Plan that there is a need for 8,245 housing units to meet the population targets by 2023. It is also detailed that of these, 5,706 are estimated to be in need of social housing.

7.3.3 Further information was requested from Galway City Council to demonstrate the need for housing in compliance with the criteria set out under Section 6(4) of the Act. A response was received from the Council on the 28th of November 2019 which is summarised in section 5.1. I consider the assessment and submission to be robust and adequately sets out compliance with the criteria under section 6(4) of the Act.

7.4 **Suitability for Housing**

7.4.1 Section 6 (5) of the Act which determines the suitability for housing having regard 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 2000) necessary to enable housing to be provided and serviced, and

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

The Core Strategy

7.4.2 The subject site is zoned for residential development under the Galway City Development Plan. The Core Strategy projects a need for over 8,245 additional residential units over the period 2017-2023. The site is located in an established urban area. I consider the proposed site to be entirely consistent with the provisions of the core strategy set out in the City Plan.

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

7.4.3 I am satisfied that the site is served by adequate public infrastructure necessary to enable housing to be provided and serviced. The site is located in an established urban area and there is an extant permission for residential development on the lands.

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

7.4.4 There are no factors affecting the physical condition of the land which may affect the provision of housing.

7.4.5 I consider that the site complies with the criteria set out in Section 6(5) of the Act and that the site is suitable for housing. There are no demonstrable constraints that would inhibit its development for residential use in accordance with the zoning objective for the site.

7.5 Vacant or Idle/Purpose of the Lands

7.5.1 The third consideration of Section 5(1)(a) is whether the site, or the majority of the site, is vacant or idle or used for a purpose other than housing.

7.5.2 The 2015 Act (as amended) requires the Board on appeal to look at the past condition of the site and determine if the site was vacant or idle. S 9 states:

(2) On an appeal under this section the burden of showing that the site was not a vacant site for the duration of the 12 months concerned is on the owner of the site.

7.5.3 I note that the Planning Authority undertook 2 different site visits with respect of the site and have demonstrated that the site was a vacant site for the duration of the 12 months concerned. The appellant has not put forward any evidence to the contrary that the site was not a vacant site for the duration of the 12 months concerned. From observations on site, it is clear that the site has been inactive for some time and is vacant and idle.

7.5.4 The appellant's principle contention is that the site forms part of larger landholding in their ownership and that the continuing uncertainty surrounding the N6 Galway City Ring Road Protected Scheme has delayed design progress on the site.

7.5.5 The documentation submitted with the application indicates the extent of the entire landholding and the portion affected by the proposed route of the bypass. It is evident that the bypass route does not directly impact upon the subject vacant site. The subject site is accessible from the Ballymoneen Road and, therefore, is not reliant on the bypass for access. I am not satisfied on the basis of the documentation submitted, that an application for residential development could not be progressed on the subject lands pending the resolution of the final layout of the bypass if approved. Development could be progressed on a phased basis in accordance with

an overall masterplan, with a first phase on the subject site. This in my view would not constitute piecemeal development.

7.5.6 It is also detailed that the appellant has been proactively progressing a masterplan for the site and has carried out a number of surveys including topographical survey, site investigations, ecological assessment and archaeological assessment and, therefore, that the lands are not idle. Having regard to the nature of the surveys described by the appellant, I am satisfied that these do not constitute development works. The lands remain vacant or idle.

7.5.7 There is no provision in the legislation to prohibit the entry of a vacant site onto the register on the basis that a planning application for their future development will be lodged. The 2015 Act is only concerned with the actual use on site and whether it is performing a specific purpose in order to determine if a site is vacant/idle. In this instance, the site is clearly vacant at present and this appears to have been the case during the intervening period. The appellant has not detailed any permitted on-site uses and relies solely on the administrative tasks of site planning and surveys. The 2015 Act makes no allowance for such administrative tasks and I am satisfied that the site was a vacant site for the relevant time period and continues to be a vacant site.

8.0 Conclusion and Recommendation

8.1 In conclusion, I am satisfied that the subject site is a vacant site and that purported delays in progressing the development of the landholding as a whole pending the finalisation of the N6 Galway City Ring Road scheme does not constitute an impediment to the development of the subject site in its own right.

8.2 I recommend that in accordance with section 9(5) of the Urban Regeneration and Housing Act 2015, the Board should confirm the entry on the register of lands north west of Fana Bui, Ballymoneen Road, Galway (Site Ref. No:011West) as it was a vacant site for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 12th day of March 2019 shall be deemed to take effect from that date.

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 provisions of the Galway City Development Plan 2017-2023
- (e) That the majority of the site is vacant or idle, there is a need for housing in the area, the site is suitable for the provision of housing, and that insufficient reason is put forward to cancel entry on the Vacant Sites Register.
- (f) That the development of the site is not premature pending the finalisation of the N6 Galway City Ring Road scheme

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

Erika Casey
Senior Planning Inspector
9th January 2020