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Bord  
Pleanála

## Inspector's Report ABP-306411-20

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<b>Type of Appeal</b>	Section 9 Appeal against Section 7(3) Notice
<b>Location</b>	Vacant Site CE44816 F, R15 Zoned Lands, Gort Road, Ennis, to the north of Fern Hill housing development
<b>Planning Authority</b>	Clare County Council
<b>Planning Authority VSL Reg. Ref.</b>	VSR16 2019
<b>Site Owner</b>	Thomas Sheils, Ted Sheils, Simone Sheils, Daniel Sheils and Audrey Sheils
<b>Planning Authority Decision</b>	Place on Register
<b>Date of Site Visit</b>	27 <sup>th</sup> of March 2020
<b>Inspector</b>	Erika Casey

## 1.0 Introduction

- 1.1. This appeal refers to a Section 7(3) Notice issued by Clare County Council, stating their intention to enter a site referred to as lands at CE44816 F, R15 Zoned Lands, Gort Road, Ennis, to the north of Fern Hill housing development 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) of the URH Act 2015.
- 1.2. The appeal site registered under VSL reference VSR16 2019, has a five registered owners: Thomas Sheils, Ted Sheils, Simone Sheils, Daniel Sheils and Audrey Sheils.

## 2.0 Site Location and Description

- 2.1 The subject site with a stated area of 0.68ha ha is located on the eastern side of the Gort Road to the north of Ennis Town Centre. The site is greenfield in character and undeveloped. Development in the vicinity comprises primarily low density suburban housing. There is a further undeveloped parcel of land to the south. Hazel Lane abuts the northern boundary. There is a low stone wall and trees along the eastern boundary.

## 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) of the Act. The Notice is dated the 18<sup>th</sup> of December 2019 and is accompanied by a map outlining the extent of the site to which the Notice relates referred to as R15.
- 3.1.2. 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.

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 in 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) of the Act of 2000 with the objective of zoning for use solely or primarily for residential purposes, and includes any structures on such land.”*

## **3.2. Development Plan Policy**

### **Clare County Development Plan 2017-2023**

3.2.1 The site is zoned for residential development in the Clare County Development Plan 2017-2023 within the Ennis Municipal District. Land to the immediate south of the site is zoned Open Space. Section 16.2.8 of the Plan refers to lands identified as areas on which the Vacant Site Levy can apply with Residential lands at Fernhill, Gort Road, included.

## 4.0 Planning History

4.1 The site has no recent planning history.

## 5.0 Planning Authority Decision

### 5.1. Planning Authority Reports

5.1.1 A Vacant Site Report (11.11.2019) was prepared for the site outlining the dates of the visits to the site, description of the area, zoning, planning history and the type of site for the purposes of the Act which in this case is 'Residential'. The following key points are noted:

- Site visits were undertaken on the 09.02.2018, 07.09.2018, 02.10.2019 and 06.11.2019.
- The site was found to be idle.
- The site is situated in an area in which there is a need for housing.
- The site is zoned for residential use and is deemed suitable for residential use.
- The site is in excess of 0.05ha and does not include any structure that is a person's home.

5.1.2 A further Planning Report (13.12.2019) was prepared in relation to the lands following a submission seeking the removal of the site from the register. This noted:

- The site is in its current ownership since March 2019. At the time of acquiring the site, the land was zoned 'Residential' and the extent of the zoning was in place since January 2017 when the Co. Development Plan became effective.
- The site is zoned for residential use and is deemed suitable for residential use.
- The site is 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.
- A further site visit was undertaken on the 12<sup>th</sup> of December 2019.
- It recommended that the lands should be included on the Vacant Sites Register and that a section 7(3) Notice be issued.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1 An appeal was received from HRA Planning on behalf of the landowners on the 14<sup>th</sup> of January 2020. The grounds of appeal can be summarised as follows:

- State that the PA have failed to comply with the statutory provisions of the Act. Correspondence issued by the Council in November 2019 stated that the subject site is a 'potential' vacant site. Nowhere thereafter, and prior to the issue of the Notice to the property owner on December 19<sup>th</sup> did the Planning Authority give written notice to the property owner that the subject site was/is a vacant site in the opinion of the Council for the purpose of entering the site onto the vacant site register.
- The Notice issued to the property owner under the provisions of Section 7(1) and its express reference to 'potential' was not just vague, but, it presents an opinion of the Planning Authority which is, and was, indefinite, and undetermined in respect to whether the subject site was or was not actually vacant for the purpose of notifying the property owner and then, entering the site onto the vacant site register.
- The property owner is mindful that the statutory provisions, set out in Section 7(1) does not allow a Planning Authority to enter a site on a vacant site register in such undetermined and indefinite circumstances or in the context of whether a site may be a 'potential' but not 'actual' vacant site. In the absence of notification and determination by them that the subject site is a 'vacant' site, the Planning Authority have acted ultra vires.
- The Planning Authority has not given written notice to the property owner setting out the reasons for the proposed entry to the Vacant Site Register. The property owners contest that references to Section 5(1) and 5(2) of the Act by the Planning Authority in the correspondence are presented in a vague and tenuous manner relative to the subject site. The property owners submit that there is a material requirement to state specific and confirmed reasons why the

site must be entered into the register of vacant sites.

- Contest that the site is idle and that it has accommodated livestock. It is submitted that site does have a purpose and it does have planning effect. The site is zoned for housing giving it a clear planning purpose. The owners are giving active consideration to the development of the subject site and intend to do so. The Board must have regard to the property's owner's considerations of the site, even though the site is vacant.
- Refers to section 6(6) of the Act, and specifically that there has not been a reduction in the number of habitable houses, or the number of people living, in the area caused or exacerbated by the current condition of the subject site. Refers to detailed information from the census and that the demographic analysis clearly illustrates that there has not been a reduction in the number of people living in the area and, therefore, the site fails to meet the criteria set out in Section 6(6)(c). There is no evidence that vacancy has had consequential adverse effects to the amenities of the character of the area.
- Refers to the 12 month period and that there is an absence of any evidence to confirm that the site was vacant or idle for the period of 12 months preceding the date of placing the site on the register.

## 6.2. Planning Authority Response

- The PA issued a notice to the land owners of the site in November 2019 which outlined the reasons for the proposed entry of the site onto the register. A response from the land owners was received in December 2019. The submission of the land owners was noted and considered, however, the site meets the criteria set out in the Act and is deemed to be a vacant site. The PA issued a written notice to the land owners in December 2019 stating that the site has been entered on to Vacant Site Register. The Planning Authority has complied with Section 7 of the Act.
- Note a number of site inspections carried out and that the site was found to be vacant.

- States that there is no reference to Agricultural use in the legislation.

## 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.

7.1.2. 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.

7.1.3. 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 Section 6 (4) determines whether or not there was a need for housing in an area within the Planning Authority's function area by reference to:

- (a) the housing strategy and the core strategy of the planning authority*
- (b) house prices and the cost of renting 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% of the total number of houses in the area.*

7.1.5 Section 6(5) of the Act determines the suitability of a site 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.*

7.1.6 I would note that the appellants do not question the suitability of the site for housing. The lands are zoned for residential development and no issues have been raised by the appellants regarding any physical impediment to their future development for such use. I, therefore, do not intend to address this matter further. My assessment will, therefore, address specifically section 5(1) (a) (i) and (iii) as to whether the site is situated in an area in which there is a need for housing and whether the site, or the majority of the site, is vacant or idle. I will then assess the procedural matter of the notice.

7.1.7 I note that in the appeal, the appellants make detailed reference to Section 6(6) of the Act which states that a Planning Authority or the Board on appeal shall determine whether or not the site being vacant or idle has adverse effects on the existing amenities or reduces the amenity provided by existing public infrastructure and facilities (within the meaning of Section 48 of the Act 2000) in the area in which the site is situated or, has adverse effects on the character of the area for the purposes of considering the vacant site levy. Specific reference is made to section 6(6) (c). This section of the Act however, refers to a vacant site on regeneration land. The subject site has been identified as a vacant site on residential land and, therefore, the provisions of Section 6(6) are not applicable (refer to Circular Letter PL7/2016).



## **The Need for Housing**

7.1.8 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.

7.1.9 Section 6 (4) sets out the criteria to determine whether or not there was a need for housing in an area within the Planning Authority's function area.

7.1.10 I note that a detailed Housing Need Assessment for Ennis and Environs was carried out by the Planning Authority in 2019. This notes the following key points:

- The Core Strategy set out in the County Plan states that the estimated population of Ennis in 2023 will be 33,497 persons.
- Ennis is identified as a Hub Town in Co. Clare. It is anticipated that there will be a need for 3,211 new houses to be delivered in Ennis by 2023.
- Note that there was a marked decrease in the number of units being built since 2006 and that the census data reveals that only 88 new houses were constructed between 2011 and 2016.
- As of Quarter 2 2019, the average monthly rent in Co. Clare is €858.00 (+11.2% in Q2 of 2019 from the Q2, 2018 figure). The average house price in Co. Clare in Q2 of 2019 was €196,817 which represents an increase of 11.5% from the Q2 of 2018 average price for County Clare.
- The total households seeking social housing support in Ennis is 1,127.
- According to Daft, there are currently 163 residential properties for sale in Ennis with just 17 residential properties available to rent. The 2016 CSO indicates that Ennis has a population of 25,276 persons which consisted of 9,733 households. 5% of the CSO figure from 2016 would be 487 units. Based on the Daft.ie data, it is clear that the total number of residential properties that are available for either sale or rent at 180 units is significantly less than the 5% figure of 487 units.
- The report concludes that having regard to the criteria and to the continual increase in demand for housing, that it is considered there is a need for housing in accordance with Section 6(4) of the Act.

7.1.11 I would concur with the assessment set out by the Planning Authority that there is a demonstrable need for housing in Ennis. I am satisfied that the PA have adequately demonstrated housing need in the area.

**The site, or the majority of the site, is vacant or idle**

12 month period

7.1.12 It is contended by the appellant that the PA have not adequately demonstrated that the site has been vacant or idle for the preceding 12 month period.

7.1.13 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, section 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.*

*(3) Where the Board determines that a site was not 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 in accordance with section 6 (2) it shall give written notice to the planning authority who shall cancel the entry on the register in respect of that site.*

7.1.14 The relevant time period for this appeal extends 12 months back from the date on which the site was entered on the register, in this instance the 18<sup>th</sup> of December 2019. I note from the report of the Planning Authority that a number of site visits were undertaken including 09.02.2018, 07.09.2018, 02.10.2019, 6.11.2019 and 12.12.2019.

7.1.15 I note in this instance that a site visit was undertaken in February and September 2018. The Notice of Entry to the VSR was issued to the appellants in December 2019. Further site visits were undertaken in October, November and December 2019. I am satisfied that site visits were undertaken over an appropriate timeframe to determine that the site was vacant for a period of at least 12 months and from these inspections, that the PA concluded the site was vacant.

**Purpose of the Site**

7.1.16 Section 5(1)(a)(iii) of the Act states 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”.*

7.1.17 It is contended by the appellant that the subject lands are not idle and that they have accommodated livestock. It is also noted that the Board should have regard to the appellant’s considerations of the site and their intent to develop it in accordance with the zoning objective.

7.1.18 In relation to the first point, The PA state that there is no reference to “Agricultural” use in the legislation. However, irrespective of this, in my view what must be considered is whether the subject lands were being used for a ‘purpose’ prior to them being zoned residential. Such a ‘purpose’ can include the use of the lands for agriculture.

7.1.19 In this instance there is a complete paucity of information or evidence to suggest that the lands are or were in use for an agriculture purpose. No agricultural activity was noted by the PA during their site visits. At the time of my site visit, there was no evidence on site to substantiate this claim. There was no evidence of any livestock on the site nor was it in use for any tillage purposes.

7.1.20 I do not consider that the appellant has submitted any compelling evidence that the lands are in agricultural use. There is no definitive evidence in my view that the lands are or were in active agricultural use.

7.1.21 The appellant also refers to the fact that it is their intent to develop the lands and that they are giving active consideration to the development of the subject site for residential use.

7.2.22 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 may be imminent. 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. I am satisfied that the site was a vacant site for the relevant time period and continues to be a vacant site. Furthermore, notwithstanding the appellant assertions to the contrary, the site is also clearly idle and is not in use for any purpose including an agricultural purpose.

### **Procedural**

7.1.23 It is submitted by the Appellants that the PA have acted ultra vires and that prior to the entry of the site onto the register, the notification of the PA that the site was a 'potential' vacant site was vague and presents an opinion of the Planning Authority which is, and was, indefinite, and undetermined in respect to whether the subject site was or was not actually vacant for the purpose of notifying the property owner and then, entering the site onto the vacant site register. It is stated that Section 7(1) does not allow a Planning Authority to enter a site on a vacant site register in such undetermined and indefinite circumstances or in the context of whether a site may be a 'potential' but not 'actual' vacant site.

7.1.24 Section 7 of the Act sets out the procedure for the entry of a site on the register. It is stated that before entering a site on the register, a PA shall give written notice to the owner of the site setting out the reasons for the proposed entry and the owner may make submission in respect of the proposed entry to the PA in writing within 28 days after the date of such a notice.

7.1.25 In this instance, a planner's report dated the 11.11.2019 assessed the site and concluded that it fully met the criteria set out in Section 5(1) (a) (iii) of the Urban Regeneration and Housing Act 2015 as amended and hence was considered suitable for inclusion on the Vacant Site Register.

7.1.26 Notices were issued to the land owners in November 2019 informing them of the intent of the Council to enter the site onto the Vacant Site Register. The notice explicitly refers to the criteria set out under Section 5(1) (a) and 5(2) of the Act and that the Council proposed to enter the subject site onto the Vacant Site Register. The landowners were given an opportunity to make a submission prior to the entry.

7.1.27 The appellant in their submission focusses of the semantics of the wording of the notice issued in November 2019 and the fact that it refers to a 'potential' vacant site. However, in my view the notice issued to the appellants fully complies with the

provisions of section 7(1) of the Act. The notice clearly sets out the reasons for the proposed entry by reference to section 5(1)(a) and 5(2) of the Act and that the owner may make submission in respect of the proposed entry. The statutory obligations set out under section 7(1) of the Act have in my view, been fulfilled.

7.1.28 I note that following the issue of the Notice on the 11<sup>th</sup> of November 2019, a submission was made by the landowners (05.12.2019). A further planner's report dated the 13<sup>th</sup> of December 2019, fully considered the submission and notwithstanding the issues detailed by the land owners, concluded that the site was considered to be a vacant site. In accordance with the provisions of section 7(3) of the Act, the Notice of Entry was issued on the 18<sup>th</sup> of December 2019.

7.1.29 In my view the use of the word 'potential' on the original notice issued under section 7(1) is irrelevant. The PA clearly complied with the statutory provisions set out under section 7(1), clearly set out the reasons for the proposed entry and that the owner may make a submission in respect of the proposed entry. There is in my view, no procedural error in the statutory notices.

## **8.0 Recommendation**

8.1. I recommend that in accordance with Section 9(5) of the Urban Regeneration and Housing Act 2015 (as amended), the Board should confirm the entry on the register of site (VSR3 2019) that it was a vacant site for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 18<sup>th</sup> of December 2019 shall be deemed to take effect from that date.

## **9.0 Reasons and Considerations**

9.1 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,

(e) That the site is suitable for the provision of housing by reference to the provision of public infrastructure and facilities (within the meaning of section 48 of the Planning

and Development Act, 2000, as amended) necessary to enable housing to be provided and serviced,

(d) 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,

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

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**Erika Casey**  
**Senior Planning Inspector**

**30th March 2020**