



An
Bord
Pleanála

Inspector's Report ABP-306417-20

Type of Appeal	Section 9 Appeal against Section 7(3) Notice
Location	Vacant Site at CE45063F, R1, Smithstown, Shannon Town, Co. Clare
Planning Authority	Clare County Council
Planning Authority VSL Reg. Ref.	VSR2 2019
Site Owner	Stonewall Engineering Company Limited
Planning Authority Decision	Place on Register
Date of Site Visit	27th March 2020
Inspector	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 site at CE45063F, R1, Smithstown, Shannon Town, Co. Clare 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 VSR2 2019, has a one registered owner: Stonewall Engineering Company Ltd. They are the registered owners since October 2015. Notices were issued to the Company Director – Ann McInerney and Company Secretary James McInerney.

2.0 Site Location and Description

- 2.1 The subject site with an area of 5.72 ha is located to the north of Shannon Town, to the north of the Airport Road. The site itself is undeveloped and greenfield in character. Hedgerows delineate field boundaries within the site. To the immediate north of the site, there is a local access road, undeveloped land and a garden centre. Development further to the north is primarily commercial in character. The site is bound by the Tullyvaraga Road to the west. To the south, is some further commercial development including a hotel and the R471 Road. To the south of the R471 Road is low density suburban housing. To the east, are a number of commercial and light industrial units. Access to the site is via an existing informal pedestrian access laneway off Bothar Luchra.

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 18th of December 2019 and is accompanied by a map outlining the extent of the site to which the Notice relates referred to as R2.

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**

Shannon Town and Environs Local Area Plan

3.2.1 The site is zoned for residential development in the Shannon Town and Environs Local Area Plan 2012 to 2018 (extended until 2022). The LAP includes the following objective for the site:

“This site is located behind the Shannon Oaks Hotel and has a rural countryside feel, despite being located centrally in the town. It is currently in agricultural use. A master plan shall be prepared for the development of this site. This shall ensure that a co-ordinated approach is taken and that this important, centrally-located site maximises its full potential, subject to site suitability and environmental constraints. In order to maximise its location adjacent to the town centre, the site shall be developed for a high density scheme of residential units, which, by their central location, have the potential to be served by a future renewable energy network (for example district heating), that may be developed in the future on site E3. Layout shall be to a very high standard that maximises the opportunities for energy efficiency through, for example, solar gain. A suitable appropriate buffer shall be maintained to the commercial zoning along the northern, eastern and southern site boundaries, to be agreed at detailed project level prior to commencement of any development on R1.”

4.0 Planning History

Planning Authority Reference P06-867

- 4.1 Permission refused for a mixed use retail park with a total gross floor area of 17,447 sq. metres incorporating D.I.Y anchor store including garden centre, 3 no. retail warehouse units, 10 no. retail units, 8 office units, convenience store, department store and 836 no. car parking spaces. Reasons for refusal related to prematurity pending the preparation of a masterplan for the area and design.

Planning Authority Reference P08-1726

- 4.2 Permission granted for a mixed use development with a total gross floor area of 14,850 sq. metres comprising 3 no. retail warehouse units, retail unit, discount foodstore, motor showroom, business centre, neighbourhood centre, medical centre and 620 no. car parking spaces.

Site to North

Appeal Reference 305437

4.3 Permission granted by the Board in January 2020 for three mixed commercial buildings.

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 12.10.2018, 17.10.2019 and 04.11.2019. A further site visit undertaken on the 25.02.2019.
- The site was found to be vacant and idle.
- The site is zoned R1 – Residential as per the Shannon Town and Environs LAP 2012-2018 which will remain in effect until a new LAP is made in 2023.
- The site is situated in an area in which there is a need for housing.
- The site is in excess of 0.05ha and does not include any structure that is a person's home.

5.1.4 A further Planning Report (12.12.2019) was prepared in relation to the lands following a submission seeking the removal of the site from the register. This noted:

- Note that at the time the site was purchased in 2015, it was zoned Residential.
- 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 16th of January 2020. The grounds of appeal can be summarised as follows:

- The PA have erred on the inclusion of the subject property on the vacant site register by failing to properly and sufficiently fulfil the statutory obligations set out under the provisions of section 7 of the Act. State that the PA have failed to provide sufficient evidence that the site has been a vacant and idle for the period of 12 months preceding the date of entry onto the register. Submit that the site is neither vacant or idle.
- Consider that the vacant site levy has been determined solely on land use zoning objectives which are outdated and unresponsive to current settlement circumstances. The existing LAP has surpassed its normal and reasonable 6 year cycle in which review and renewal would normally have occurred. The zoning objective is not fully cognisant of the technical circumstances and requirements that apply in developing this site for residential development and which did not apply at the time when the property was zoned. The absence of a full review of the plan has prevented the property owner from making a submission seeking a more appropriate and deliverable land use objective for the site that would be more compatible with the established pattern of development in the vicinity. The property was purchased in 2015 as a distressed asset and it was purchased with the intention of seeking its rezoning. The owner has no intention of pursuing a residential development on the site.
- Since the LAP was adopted, the OPW have published CFRAM Flood Risk data. This identifies and illustrates the potential for both fluvial and tidally influenced coastal flood risk implications to the subject property. The planning application design of residential development of this property would not only be influenced and potential restricted by this confirmed flood risk, but would also require; considerable investment in examination of off site flood risk effects and

appropriate off site management due to the larger connected hydrological regime.

- It is submitted that it is unreasonable that the owners should be penalised by inclusion on the vacant site register when in fact it is unclear even at Plan level, whether the site is still suitable for residential development.
- 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 19th, 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. It is submitted that site does have a purpose and it does have planning effect. The site is zoned for housing. Given that there is no demand for housing development, a Grazing Licence Agreement is in place in respect the subject property. The Board is referred to the formal 10 year memorandum of understanding between the property owner and a licensee which has been in place since 2016. The property is operating a permissible use.
- The Board must have regard to the property's owner's considerations of the site, even though the site is vacant.
- Refers to the rationale for the vacant site levy and state that the lands have not been purposively held back from development because there is no demand of housing in Shannon; the subject property left in its current site has not resulted in any detrimental progression of wider development plan objectives given that there is more than sufficient quantum of residential zoned land dispersed throughout the plan area; no evidence from the PA that the landowner purposively held back residential development and that there is no evidence to confirm that it is viable to develop the site. The property owner has demonstrated that they have not purposely held back the property from residential development and that it has not been viable to develop the property for housing.
- The subject property has not been identified as a designated area or designated site for the purpose of Clare County Council imposing a Vacant Site Levy under the Act. The subject property does not form part of any existing land use zoning which is contained in the Clare County Development Plan 2017 – 2025 and has not been identified on the prescribed list set out in Section 16.2.8 of the CDP. The provisions of the Shannon Town and Environs LAP 2012 – 2018 do not contain any objectives or designation for the purpose of implementation of the Vacant Site Levy in the same manner as the CDP has done. There is no basis for applying a Vacant Site Levy to the subject property

in this instance.

- Refers to section 6(6) of the Act, and that the property does not have adverse effects on the character of the area. Refers to 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

- Matters as to the suitability of the development of the land for residential use and the suitability of the zoning are not matters for consideration under the provisions of the Urban Regeneration and Housing Act 2015.
- Matters such as Flood Risk Management do not come under the scope of the Urban Regeneration and Housing Act.
- 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.
- The subject site is considered to be a designated area for the Vacant Site Levy as it is zoned for residential use in the Clare County Development Plan 2017-2023 as varied.
- The Housing Need Assessment carried out demonstrates that there is a need for housing in Shannon.

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 The appellants submit in detail the case as to why the existing residential zoning applicable to the land is unsuitable. It is contended that the existing LAP is outdated and that the lands are more suited for commercial development. Notwithstanding the appellant's detailed submission, I note that there is no provision under the Urban Regeneration and Housing Act 2015 to consider the appropriateness of the zoning objective pertaining to the site. I will not, therefore, consider this matter any further. The site is zoned Residential under the operative development plan for the area and will be considered in accordance with the tests set out in Section 5(1)(a) of the Act.

7.1.7 I also note that the appellants state that there is an absence of evidence that the property owner has purposively held the property back from development and that this has had a consequential adverse effect on the progression of wider development plan objectives. As will be set out below, the PA have demonstrated that there is a need for housing in the area. The onus is on the PA to demonstrate that residential lands that are considered vacant meet the tests set out under section 5(1) (a) of the Act and as further elaborated on under section 6(4) and 6(5) of the Act. There is no obligation for the PA to demonstrate that the land owner has purposely held back a property from residential development.

7.1.8 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).

7.1.9 My assessment will, therefore, address specifically section 5(1) (a) (i) (ii) and (iii) as to whether the site is situated in an area in which there is a need for housing, whether the site is suitable for housing and whether the site, or the majority of the site, is vacant or idle. I will then assess the procedural matters of the notice and the Development Plan.

7.2 The Need for Housing

7.2.1 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.

7.2.2 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.

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

- The core strategy estimates that the population of Shannon in 2023 will be 12,931 people. This represents an increase of 1,185 households over the plan period.
- There will be a need for 1,250 new houses to be delivered in Shannon by 2023. There has been a marked decrease in the number of units being built in Shannon since 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 €192,825 which represents an increase of 3.2% from the Q2 of 2018 average price for County Clare.

- The total households seeking social housing support in Shannon is 399.
- According to Daft.ie, there are currently 45 residential properties for sale in Shannon with just 5 residential properties available to rent. The 2016 CSO indicates that Shannon has a population of 9,729 persons which consisted of 3,678 households. 5% of the CSO figure from 2016 would be 184 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 184 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.

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

7.3 **Suitable for Housing**

7.3.1 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.

7.3.2 The subject site is zoned for residential development under the Shannon and Environs Local Area Plan 2012-2018. The County Plan sets out the core strategy for the county and details that it is anticipated that the population of Shannon will increase from 9,729 persons to 12,931 persons by 2023. It is stated that there will be a need for an additional 1,250 new houses to be delivered in the town by 2023.

7.3.3 The site is located in an established urban area and no constraints in terms of servicing by public infrastructure and facilities have been identified.

- 7.3.4 No factors have been identified that would affect the physical condition of the land which might affect the provision of housing.
- 7.3.5 The appellants detail that updated CFRAM mapping indicates that there are both pluvial and tidally influenced coastal flood risk implications for the site. It is stated that the development of the subject site for residential development would require considerable investment in the examination of off-site flood risk effects and appropriate off site management due to the larger connected hydrological regime.
- 7.3.6 The CFRAM mapping attached to the appeal indicates that a portion of the site is located within an area affected by both fluvial and coastal flood events. I do not concur however, that the identification of potential flood risk on the site would preclude the future development of the lands for housing. Table 5.1 of the Planning System and Flood Risk Management – Guidelines for Planning Authorities sets out the Justification Test for Development Management. The guidelines detail that where development has to take place in areas at risk of flooding, the risks should be mitigated and managed through the location, layout and design of the development to reduce such risks to an acceptable levels. I am satisfied that any potential flood risk to the site could be addressed through the preparation of a site specific flood risk assessment and appropriate mitigation measures and that the potential for flood risk does not negate the suitability of the lands for housing. I note that the appellant has not set out any technical case as to why the site would be unsuitable for development due to flood risk other than that such development would require considerable investment in the examination of off-site flood risk effects.

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

12 month period

7.4.1 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.

7.4.2 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, 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.

7.4.3 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 18th of December 2019. I note from the report of the Planning Authority that a number of site visits were undertaken including 12.10.2018, 12.02.2019, 17.10.2019 and 4.11.2019.

7.4.4 I note in this instance that a site visit was undertaken in October 2018. The Notice of Entry to the VSR was issued to the appellants in December 2019. Further site visits were undertaken in February, October and 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

7.4.5 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”.

7.4.6 It is contended by the appellant that the subject lands are not idle and that they are in use for agricultural purposes. It is also noted that the Board should have regard to the appellant’s considerations of the site.

7.4.7 In relation to the first point, in my view 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.

7.4.8 The only evidence of agricultural use is a grazing licence attached to the appeal submission that states the lands are to be used for grazing for a 10 year period from 2016 to 2026. I do not consider that the appellant has submitted any compelling evidence that the lands are in active agricultural use.

7.4.9 I refer the Board to Circular Letter PL7/2016 which details that the intent of the Vacant Site Levy is as a land activation measure primarily to incentivise the activation of development sites and to bring vacant or underutilised land in urban areas into beneficial use by way of a levy. It states that it is important that appropriate mechanisms are put in place to ensure that land, particularly in urban areas is used in the most efficient and effective manner possible. The levy is intended to incentivise such development and ensure that land in urban areas is used appropriately.

7.4.10 Appendix 3 of the circular sets out guidance regarding identifying vacant sites. It states:

“In certain circumstances a site that is vacant may be used on a temporary short term or periodic ad hoc basis.....A site that is vacant and used for such temporary purposes would not be considered as being in full and active use. Therefore, the levy can be applied.”

7.4.11 In this instance, whilst the land may be rented out on a temporary basis for cattle grazing pending their development, I do not consider that this is sufficient evidence that they are in permanent use for agriculture. There is no definitive evidence in my view, that the lands were or are in active, purposeful agricultural use. From the submission, it is clear that the appellants purchased the lands in 2015 with the intent for their development and not for agricultural use. The current grazing operations activated on the site are in my view a temporary use and in this context, the levy can be applied in full. The lands were zoned ‘Residential’ at the time of purchase.

7.4.12 The appellant also refers to the fact that it is their intent to develop the lands. There is however, 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 progressed. 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 a permanent agricultural purpose.

7.5 Procedural – Compliance with Section 7(1) of the Act

7.5.1 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.

7.5.2 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.

7.5.3 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.

7.5.4 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.

7.5.5 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.

- 7.5.6 I note that following the issue of the Notice on the 11th of November 2019, a submission was made by the landowners (06.12.2019). A further planner’s report dated the 12th 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 18th of December 2019.
- 7.5.7 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.

7.6 Procedural – Development Plan

- 7.6.1 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.”

7.6.2 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.

7.6.3 I have reviewed the statutory development plan for the area which is the Shannon and Environs Local Area Plan 2012-2018 (as extended to 2022). I have also reviewed the Clare County Development Plan 2017-2023. There is no reference to sites or zoning objectives to which the vacant site levy is applicable in the LAP. The County Plan (section 16.2.8) does list a number of sites in the County to which the vacant site levy is applicable, however, the subject site is not specifically identified. 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.”

7.16.4 In this instance, the subject site is zoned 'Residential'. On balance, notwithstanding the absence of a site specific reference in the Local Area Plan or 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.

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 (VSR2 2019) that it was a vacant site for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 18th 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,
- (e) That it has not been adequately demonstrated that the lands are in use for an agricultural purpose,

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

Erika Casey
Senior Planning Inspector

30th March 2020