



An
Bord
Pleanála

Inspector's Report ABP-306455-20

Type of Appeal	Section 9 Appeal against Section 7(3) Notice
Location	Vacant Site at CE 3624 and CE 45516F, RF, east of Elmwood, Roslevan, Ennis, Co. Clare
Planning Authority	Clare County Council
Planning Authority VSL Reg. Ref.	VSR3 2019
Site Owner	S. Flannan's (Killaloe) Diocesan Trust
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 lands at CE 3624 and CE45516F, R7, east of Elmwood, Roslevan, Ennis, 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 VSR3 2019, has a one registered owner: St. Flannan's (Killaloe) Diocesan Trust.

2.0 Site Location and Description

- 2.1 The subject site with an area of 1.33ha is located to the east of Ennis Town Centre in an area known as Roslevan. The site is undeveloped and greenfield in character. The site is adjoined to the east by a ribbon of one off houses which address a minor public road. The site has limited frontage to this road. To the north, are lands under development for a housing development known as Curates Court. These lands front onto the Tulla Road. To the south, are further undeveloped lands and further south is a church and car park. Existing housing known as Elm Wood is located to the west.

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 R7.
- 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 in the neighbourhood of Roslevan which is addressed at Section 2.3 of the Plan. Section 16.2.8 of the Plan refers to lands identified as areas on which the Vacant Site Levy can apply with site R7 – east of Elm Wood, Roslevan included. In addition, section 1.6.4 of the Ennis Municipal Plan states that there are a number of sites in the Ennis Municipal District that are identified as areas where the Vacant Sites levy can apply with R7 East of Elm Wood, Roslevan specifically included.

4.0 Planning History

Planning Authority Reference 08/21142

- 4.1 Outline permission granted for a funeral parlour, new site entrance, access road and all associated site development work and services.

Appeal Reference 303413-19

- 4.2 A large portion of the site was subject to a vacant site levy appeal under appeal reference 303413-19. This appeal site also included lands to the north fronting onto the Tulla Road. The site formed part of a larger land holding. The entry of the site onto the vacant site was cancelled on the basis that there was an absence of sufficient evidence to support the contention of the Planning Authority that the site was vacant and idle for the period of 12 months preceding the date of placing the site on the register. It was also considered that there was an absence of sufficient evidence from the Planning Authority, as required by section 6(4) of the Urban Regeneration and Housing Act 2015, that the site is situated in an area in which there is a housing need.

- 4.3 The Board Direction also included the following note:

“The Board noted the commentary of the Inspector regarding the inclusion of an accumulation of lands under separate ownership, within the single designated site referenced in the Section 7(3) notice issued. The appellant in this case, is an owner of a part only of the site as designated by the Planning Authority. Attaching an entry on the Vacant Sites Register, which includes as a single ‘site’, both the appellant’s land ownership and also other lands not in the ownership of the appellant (and therefore over which the appellant has no control on matters such as, commencing authorised development, selling the site, determining a valuation), presents practical challenges in terms of the proper implementation of the legislation.

In this context, the Board considered that the spirit and intent of the legislation would be better secured, wherein a site proposed for entry on the register is clearly aligned with a single ownership, to enable all subsequent procedures within the legislation to be capable of implementation.”

Lands to the north

4.2 **Reg. Ref. 17/400** – permission granted for 14 detached houses and 12 semi-detached houses.

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 14.10.2016, 17.10.2018, 02.10.2019 and 01.11.2019.
- 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.

5.1.4 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:

- It is considered having regard to the requirements of the Urban Regeneration and Housing Act 2015 as amended by the Planning and Development Act 2018 that the site is vacant. It is noted that there is no reference to Agricultural use in the legislation which applies.
- Part of the land in question was zoned "Residential" in the Ennis Development Plan 1992 which was adopted by the Ennis Urban District Council. The lands were zoned Town Centre of Local Centre in the Ennis and Environs Development Plan 2003. The lands were zoned "Commercial 3" in the Ennis and Environs Development Plan 2008 – 2014. The lands are zoned "Residential" in the Clare County Development Plan 2017-2023. This

demonstrates since 1992 the site has been identified as a site suitable for development potential. The site has remained unoccupied and is considered to be vacant.

- A further site visit was undertaken on the 13th 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 P. Coleman and Associates on behalf St. Flannan's (Killaloe) Diocesan Trust on the 17th of January 2020. The grounds of appeal can be summarised as follows:

- States that the subject lands are in two separate folios. The notice however, only refers to one folio. The map included with the Notice does not reflect the lands in the folio as per the notice. The Notice should be cancelled based on the fact that the lands identified on the map do not fully reflect the lands subject of the Notice.
- Note that a number of new houses are under construction in Ennis and planning permission has been granted for further units. Based on the additional housing units which have become available and are currently being constructed within the immediate area of the subject lands, the previous concerns of the Board in relation to housing need still apply.
- Submit that the lands are in agricultural use and have been used for the grazing of horses for the past 6 years. Correspondence from the parish priest confirming this. State that the horses are taken off the land intermittently when grass levels are low to allow grass to recover.
- State that the lands were purchased with the intent that they would be retained for community purposes in the future. Part of the site originally purchased has already been used for community use by the provision of additional car parking

for the church and Fahy Community Hall. The land was recently offered to Knockanean National School as a temporary site.

- Note that the lands were zoned residential in the current plan adopted in December 2016. Under the previous plan, the Ennis and Environs Development Plan 2014 to 2018, the lands were zoned “Commercial 3” – Local Centre Commercial. Housing was not permitted in principle under this zoning objective.
- Note that the Vacant Site Levy can only be applied to lands designated as either “Residential” or “Regeneration”. State that previous zonings pertaining to the site were not solely residential and are not applicable.
- The appellants have owned the lands since 1974 and 2005. The existing residential zoning is only applicable to the lands from December 2016 which was after the lands were purchased.
- Consider that the land is currently in agricultural use and has been in such use for a number of years which was prior to the land being zoned “Residential”. Also the most recent purchase of the subject lands occurred before it became zoned “Residential” and before the commencement of Section 63 of the Planning and Development (Amendment) Act 2018. The subject lands, therefore, do not fall within the definition of a vacant site as outlined in Section 5(1)(as) of the Act. Refer to Circular Letter PL04/2018.
- The lands were not acquired for speculative housing purposes and the lands were not zoned for “Residential” use at the time of purchase. The appellant is not a developer or speculator.
- Note that no photographic evidence has been submitted to support contention that site was vacant for 12 month period. This is contrary to the guidance set out in Circular PL7/2016.
- State that only 2 of the site inspections were carried out within the relevant 12 month period. Visits were undertaken at times when animals had been taken off the lands for their preservation. The PA cannot categorically state that the lands were vacant for the 12 month period. Refers to a number of decisions by

the Board which were refused on the basis that it had not been demonstrated that the site had been vacant for a 12 month period.

6.2. Planning Authority Response

- The map attached to the Section 7(3) Notice clearly outlines that the vacant site is located within two land folios CE3624 and CE45516F. The planning reports also state that the vacant site is located within these two land folios.
- A Housing Needs Assessment for Ennis was carried out in October 2019 and concludes that there is a need for housing in Ennis.
- Notwithstanding Circular Letter PL06/2018, it is considered that the site is vacant and that there is no reference to “Agricultural” use in the legislation.
- 6 site visits were undertaken with respect the subject site. The site was found to be vacant. The site meets the criteria set out in the Act.
- The site has been identified as a suitable site for development since 1992, yet it has remained unoccupied and is considered vacant.

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 have been zoned for residential development and a housing development

is under construction on the site to the immediate north. 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.

The Need for Housing

7.1.7 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.

7.1.8 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.

7.1.9 The appellant submits that it has not been demonstrated that there is a need for housing in the area. I note however the Housing Need Assessment for Ennis and Environs 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.ie, 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.

7.1.10 I would concur with the assessment set out by the Planning Authority that there is a demonstrable need for housing in Ennis. The appellant highlights that 22 houses are currently being constructed in the town and that permission was granted for a further 27 units in June 2019. Notwithstanding this, there would still be a significant shortfall in the housing units required to meet the housing need based on the data presented in the PA report. 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

7.1.11 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.

7.1.12 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.

7.1.13 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 14.10.2016, 17.10.2018, 02.10.2019, 01.11.2019 and

13.12.2019.

7.1.14 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 November 2019. Further site visits were undertaken in 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.

7.1.15 I would concur with the appellant that there is a paucity of photographic information to support the Planning Authority's contention that the site was vacant. I note however, that whilst photographic evidence is best practice in accordance with the guidance set out in Circular PL7/2016, it is not a legal requirement.

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 The appellants refer specifically to Circular Letter PL04/2018. This states in relation to Section 5(1)(a)(iii) (II) that:

“This provision differentiates between lands purchased following a zoning change to residential and lands held in ownership regardless of zoning, such as those long held and operated as farms. Therefore, its aim is to focus on developers or speculators who have purchased residentially zoned and serviced lands but are not bringing those lands forward for development for that purpose. However, it confirms that lands owned and in use prior to being rezoned to residential (i.e. for agricultural purposes), and which continue in such use shall not be regarded as “vacant or idle”

for the purposes of the levy and are therefore not liable to the levy.”

7.1.18 It is contended by the appellant that the subject lands are being used for a purpose – in this case agriculture and the grazing of horses. It is also detailed that the lands were purchased prior to them becoming “Residential” lands.

7.1.19 In relation to the first point, The PA state that there is no reference to “Agricultural” use in the legislation. I would concur with the appellant however, irrespective of this, 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.

7.1.20 In support of their contention, the appellant have submitted a letter from the local parish priest stating that the lands are used for the grazing of horses and that this has been the case for 6 years. It is evident that such use is only occasional and that the animals are taken from the site at certain times to allow the grass to recover. At the time of the site visit, I noted that there was just 3 horse grazing on what is an extensive site. There was no evidence of any other agricultural activity. Whilst the correspondence submitted by the appellant is noted, I do not consider that the appellant has submitted compelling evidence that the lands are in agricultural use. There is no definitive evidence in my view that the lands are in active or purposeful agricultural use.

7.1.21 The appellant also sets out that the subject lands were not zoned for residential use at the time of purchase. It is stated that previous zonings include “Commercial” (2008-2014 Plan) and “Town/Local Centre” (2003) Plan. The PA state that the site has been identified as a suitable site for development potential since 1992. In my view however, the key test is whether the lands were being used for a purpose i.e. agriculture before they became zoned for residential use under the current County Development Plan 2017-2023. It must be demonstrated by the appellant that the lands were owned and in use for agricultural purposes prior to them being rezoned to “Residential” and currently continue to be in such use. In my view, as detailed above, the appellants have not submitted sufficient evidence that these lands have long being used for agricultural purposes either before or after they were zoned “Residential”. In my view, the occasional use of lands for grazing does not constitute an agricultural purpose.

Procedural

7.1.22 It is stated that the Section 7(3) Notice is not a valid notice as the map of the lands included with the Section 7(3) Notice does not match the lands identified in the Section 7(3) Notice which only refers to lands in Folio CE3624.

7.1.23 The subject site includes lands within 2 land registry folios:

CE45516F: St. Flannan's (Killaloe) Diocesan Trust, Westbourne, Ennis, Co. Clare

CE3624: St. Flannan's (Killaloe) Diocesan Trust, Westbourne, Ennis Co. Clare.

7.1.24 Maps indicating the boundaries of these two land folios is included in the Planning Authority Assessment Reports dated the 13th of December 2019 and the 11th of November 2019.

7.1.25 The map attached to the Notice of Entry identifies the vacant site as R7. Whilst the boundary of the site indicated on this map is different to those in the folio maps, I am satisfied that the site identified as R7 is in the ownership of the appellant and within the boundaries of the site folios identified. Furthermore, I note that the notice does not refer specifically to folio numbers. I do not concur with the appellant contention that the notice only refers to lands in Folio CE3624 and does not refer to lands in Folio CE45516f. The site identified in the Notice as R7 clearly includes lands within both folios.

7.1.26 I note concerns were raised in the previous Inspector's Report under ABP 303413 because in that instance, the site identified for the purpose of the levy had three owners. The Inspector stated that she was of the view that separate notices under separate references should have been issued to the separate owners in order to facilitate and equitable appeal process and facilitate an effective mechanism for applying the correct valuation and levy for each owners. In this case however, the notice has been issues to one land owner – St. Flannan's (Killaloe) Diocesan Trust and I am satisfied that procedurally no issues arise with the notice in this instance.

7.1.27 I also note that the appellants set out that it is the intent that the subject land will be used for community purposes. I refer the Board to Appendix 1 of Circular Letter PL7/2016 which states that the scope of the application of the levy is not restricted by ownership. It applies to land in both public and private ownership. In this regard,

irrespective of the status of the owners of the site or their intentions regarding the future development of the land, the levy in my view is applicable.

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 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