



An  
Bord  
Pleanála

## Inspector's Report ABP-306480-20

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<b>Type of Appeal</b>	Section 9 Appeal against Section 7(3) Notice
<b>Location</b>	Vacant Site at CE26807F, R2, Sixmilebridge, Co. Clare
<b>Planning Authority</b>	Clare County Council
<b>Planning Authority VSL Reg. Ref.</b>	VSR19 2019
<b>Site Owner</b>	Patricia Darcy
<b>Planning Authority Decision</b>	Place on Register
<b>Date of Site Visit</b>	27th 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 CE26807F, R2, Sixmilebridge, 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 VSR19 2019, has a two registered owners: Patricia Darcy and Malachy Darcy.

## 2.0 Site Location and Description

- 2.1 The subject site with a stated area of 2.7 ha is located to the north of the town centre. It currently comprises undeveloped greenfield lands. Access to the site is from the existing Ard Ratha housing development. To the north, is undeveloped greenfield lands.

## 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 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

### 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 Shannon Municipal District. Section 16.2.8 of the County Plan refers to lands identified as areas on which the Vacant Site Levy can apply in Sixmilebridge. The Shannon Municipal District Settlement Plan also details the site to which the vacant site levy should apply. The subject site is not specifically listed as such a site in either the County Plan or the Shannon Municipal District Settlement Plan.

## 4.0 Planning History

4.1 There have been a number of previous planning applications on the site which are summarised below:

### **Application Reference 00-1882**

- 4.2 Outline Permission granted for a development comprising of 61 dwellings and associated site works.

### **Application Reference 05-2260**

- 4.3 Approval under Outline Ref. 00-1882 for the construction of 61 no. dwellings comprising 10 no. detached dwellings, 9 terraced dwellings and 42 semi-detached dwellings, including entrance roads, footpaths, services and connections to public services including ancillary site works.

### **Application Reference 10-46**

- 4.4 Extension of duration of planning application reference 05-2260 was permitted until 22.05.2013.

### **Application Reference 13-249**

- 4.5 Extension of duration of planning application reference 05-2260 until the 21.05.2016.

## **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 23.10.2018 and 17.10.2019.
- Site has been owned by the current land owners since the 11<sup>th</sup> of June 1997.
- 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:

- No reference to agricultural use in the legislation which applies.
- Further site inspection 12.12.2019.
- The subject site meets the criteria as set out in Section 5(1)(iii) of the Urban Regeneration and Housing Act.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

6.1.1 An appeal was received from Arthur Cox on behalf of the landowners on the 22nd of January 2020. The grounds of appeal can be summarised as follows:

- The site was not and is not a vacant site consisting of residential land because the most recent purchase of the site occurred prior to the site being zoned residential. The site was purchased in 1997 for agricultural purposes, namely equestrian grazing and it was not zoned residential until 2003. The Council have confirmed that the site was not zoned residential until this year.
- The site has been used for agricultural purposes since its purchase in 1997 and continues to be used for these purposes. Specifically, the site has been rented by a farmer or grazing cattle since or around April 2013. Refer to Circular Letter PL06/2018.
- The Council failed in its legal obligation to provide adequate reasons for its decision to register the site on the VSR. Refer to a number of legal cases. Both notices are lacking in reasoning, clarity and evidence, specifically in relation to which criteria in the 2015 Act the Council has been satisfied in relation to the site.
- The Council failed its obligation under section 7(2) of the 2015 Act to have regard to any submission made by the owner of the lands.

### **6.2. Planning Authority Response**

- The points made in the appeal concerning the use of the lands have been

acknowledged; notwithstanding Circular Letter PL06/2018, it is considered having regard to the requirements of the Urban Regeneration and Housing Act 2015 as amended by the Planning and Development Act 2015, that the site is vacant. It is noted that there is no reference to Agricultural use in the legislation which applies.

- Note that a number of site visits were undertaken and when inspected, the site was found to be vacant and meets the criteria set out in the Urban Regeneration and Housing Act 2015.
- The PA did regard the submission by the land owners received in December 2019 and the points in the submission are noted and considered in the planning report dated the 18<sup>th</sup> of December 2019.

## 7.0 Assessment

### 7.1. Introduction

7.1.1. This notice has been issued under the provisions of Section 5(1)(a) of the Act which relates to 'residential' lands.

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. There are a number of extant permissions on the site for residential development. 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. Firstly however, I will consider the procedural matter of the adequacy of the Clare County Development Plan and its objectives regarding the vacant site levy.

## **Procedural**

7.1.7 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.”*

7.1.8 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.

7.1.9 I have reviewed the statutory development plan for the area which is the Clare County Development Plan 2017-2023. I have also reviewed the Shannon Municipal District Settlement Plan appended to the County Plan. Whilst both documents list a number of residential sites in Sixmilebridge to which the vacant site levy is applicable, the subject site does not seem to be 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.”*

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

### **Need for Housing**

7.1.11 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.

7.1.12 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.

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

- The core strategy estimates that the population of Sixmilebridge in 2023 was 2,985 people. It is identified as a small town.
- It is anticipated that there will be a need for an additional 130 new houses in the town by 2023.
- There has been a marked decrease in the number of units being built since 2006 and the census indicates that only 8 new houses were built between 2011 and 2016.
- The average monthly rent in Co. Clare in Quarter 2 of 2019 is €858 (up +11.2% from the 2018 figure) and the average house price in Co. Clare in Quarter 3 of 2019 is €192,825 which represents an increase of 3.2% from Quarter 3 of 2018 average price.
- The current total households seeking social housing support in the town is 227 households.
- 2016 CSO data indicated that Sixmilebridge has a population of 2,625 persons which consisted of 1,000 households. According to the Daft.ie website there are currently 16 residential properties for sale in Sixmilebridge with just 4 residential properties available to rent.
- 5% of the CSO household figure for the town is 50 units. Based on the Daft.ie figures, it is clear that the total number of residential properties that are available for rent or sale at Sixmilebridge is less than 5% figure of 50 units.

7.1.14 I would concur with the assessment set out by the Planning Authority that there is a demonstrable need for housing in Sixmilebridge. 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**

**Purpose of the Site**

7.1.15 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”.*

7.1.16 The appellants state that the most recent purchase of the site occurred prior to the site being zoned residential and that when it was purchased, it was for agricultural purposes namely horse grazing. It is detailed that since 2013, the site has been rented by a farmer for grazing cattle.

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 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 that it is in agricultural use, the appellant have submitted a letter from a local farmer stating that the site has been use since 2013 for the grazing of cattle. During the site visit however, it was noted that there was no evidence of cattle grazing on the site or indeed of any agricultural activity occurring.

7.1.21 The appellant also sets out that the subject lands were not zoned for residential use at the time of purchase in 1997 and that the lands were not in fact zoned residential until 2003.

7.1.22 Having regard to the guidance set out in Circular PL06/2018, the key test to consider, in my view, is whether the lands were being used for a purpose i.e. agriculture before they became zoned for residential use. 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.

7.1.23 In this instance, whilst the appellant has submitted some tenuous evidence that the lands are currently being used for agricultural use, no evidence is submitted to demonstrate that the lands were in use for agriculture prior to 2013 and in particular, for the period between the date of purchase in 1997 and the date the notice was issued. Despite the contention that the lands were purchased for agricultural use, I note from the planning history that permission for housing on the site was sought as far back as 2000. I do not consider that the appellants have submitted sufficient evidence that these lands have long been used for agricultural purposes either before or after they were zoned “Residential” or that this use was continual. In my view, the current use of lands for grazing (for which there is no evidence of) does not constitute an agricultural purpose.

7.1.24 I refer the Board also to Circular Letter PL7/2016 which further 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.

7.1.25 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.”*

7.1.26 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 agricultural use.

### **Procedural**

7.1.27 It is submitted by the Appellants that the PA have failed in their legal obligation to inform the appellant of adequate reasons for its decision to register the site on the VSR.

7.1.28 I have reviewed both notices issued to the appellants. The notice issued under section 7(1) of the Act relating to the proposed entry makes specific reference the fact that the site is considered a vacant site in accordance with section 5(1) (a) and 5 (2) of the Act. The Notice of Entry under Section 7(3) of the Act also states that the Council is of the opinion that the subject site is a vacant site by reference to section 5 of the Act. I also note that both notices were prepared on foot of a detailed Planning Report prepared by the PA. These reports set out further detail as to the rationale for including the sites on the Register. In my opinion, it is clear from both notices that the site was considered a vacant site because it met the criteria set out under section 5 of the Act, namely:

- (i) the subject land is zoned for Residential use and is considered to consist of Residential Land
- (ii) the site is situated in an area in which there is a need for housing,
- (iii) the site is suitable for housing, and
- (iv) the site, or the majority of the site, is vacant or idle or being used for a purpose that does not consist solely or primarily for the provision of housing or the development of the site for the purpose of such provision, provided that the most recent purchase occurred

After it became Residential Land and

Before, on or after the commencement of section 63 of the Planning and Development (Amendment) Act 2018

There is in my view, no procedural error in the statutory notices.

7.1.29 It is also contended by the appellant that the Council has failed in their obligation under section 7(2) of the 2015 Act to have any regard to the submissions made on foot of the Section 7(1) Notice. As noted by the PA, a further planner's report was prepared on the 13<sup>th</sup> of December 2019. This specifically references the points

made in the submission made by the landowners and a response is provided. I am satisfied that due consideration was given by the Planning Authority to the submission made and that on foot of that consideration, concluded that the site was a vacant site for the duration of the 12 months concerned and continues to be a vacant site and thus should be entered on the register in accordance with Section 6(2) of the Act.

## **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 (VSR19 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,
- (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.

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

**30th March 2020**