



An  
Bord  
Pleanála

## Inspector's Report ABP-309844-21

---

<b>Type of Appeal</b>	1. Section 9 Appeal against section 7(3) Notice.
<b>Location</b>	Terry's Land, Carrigtwohill, Co Cork.
<b>Planning Authority</b>	Cork County Council.
<b>Planning Authority VSL Reg. Ref.</b>	VS-0021 (Folio CK175491F).
<b>Site Owner</b>	Lyndubh Developments Ltd and Others.
<b>Planning Authority Decision</b>	Place site on register.
<b>Date of Site Visit</b>	9 August 2022.
<b>Inspector</b>	Stephen Rhys Thomas.

## Contents

1.0 Introduction.....	3
2.0 Site Location and Description .....	3
3.0 Statutory Context .....	3
4.0 Development Plan Policy .....	4
5.0 Planning History.....	6
6.0 Planning Authority Decision .....	7
7.0 The Appeal .....	8
8.0 Assessment.....	9
9.0 Recommendation.....	15
10.0 Reasons and Considerations .....	15

## 1.0 Introduction

- 1.1. This appeal refers to a section 7(3) notice issued by Cork County Council, stating their intention to enter the site at Terrysland, Carrigtwohill, Co. Cork on to the Vacant Sites Register (VSR) in accordance with the provisions of section 6(2) of the Urban Regeneration and Housing Act 2015.

## 2.0 Site Location and Description

- 2.1. The appeal site is located at Terry's Land (Terrysland), Carrigtwohill in east County Cork. The site is located amidst other land holdings and removed from Station Road to the east, but adjacent to the access streets associated with Castlelake to the west. New roads are currently under construction or close to completion on lands to the east of the site. The site lies south of the Cork to Midleton railway line. The lands are relatively flat, undeveloped for the most part, save for construction activity associated with roads and permitted development on the southern portions of the site.

## 3.0 Statutory Context

### 3.1. Urban Regeneration and Housing Act 2015 (as amended).

- 3.1.1. The Notice issued under Section 7(3) of the Act states that the planning authority 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 26 February 2021 and is accompanied by a map outlining the extent of the site to which the Notice relates.

- 3.1.2. Section 5(1)(a) of the Act 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.

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”

3.1.3. 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.

## 4.0 Development Plan Policy

4.1. The Cork County Development Plan 2014 is the operative development plan and the Cobh Municipal District Local Area Plan 2017 is the operative local plan. The site is located on lands that are subject to zoning objective CT-R-01 Medium density (A & B) residential development. The overall vacant site register reference number VS-0021 is also located on lands zoned CT-C-01 Land to provide for education purposes to include two primary schools and a post primary school with ancillary open space area suitable for playing fields.

4.2. Chapter 14 of Development Plan refers to Zoning and Land Use and includes variation number 1 with reference to implementation of the Vacant Site Levy in residential and regeneration areas as follows:

### 14.5 Vacant Sites Levy

It is the intention of Cork County Council to implement the provisions of the Urban Regeneration and Housing Act 2015, through the establishment of a Vacant Sites Register, identifying sites on which a vacant site levy can be applied. The planning authority will proactively engage through the Municipal District sub-county structures,

to identify suitable vacant sites on lands zoned residential and on lands designated as regeneration areas in this plan, which meet the criteria for inclusion in the vacant site register. This will be achieved through a focused application of the levy, facilitating sustainable urban development and bring such vacant sites and buildings in urban areas into beneficial use.

### Regeneration Areas

The Urban Regeneration and Housing Act 2015, provides for the inclusion of objectives for the development and renewal of areas identified as being in need of regeneration. As part of the preparation of the Local Area Plans, regeneration sites have been identified in many of our towns. The main objective in identifying Regenerations Areas is to draw attention to the opportunities that exist to redevelop key areas within the towns, where such sites have the potential to contribute to the rejuvenation of the towns, deliver housing, and perhaps act as a catalyst for other developments. In accordance with the provisions of the Urban Regeneration and Housing Act 2015, regeneration areas may, in time, be subject to the Vacant Sites Levy where the regeneration area is vacant or idle and this has adverse effects on the amenities / character of the area.

### County Development Plan Objective

#### ZU 5-1 Vacant Site Levy-Residential and Regeneration Areas

Encourage the development and renewal of areas, on lands zoned as residential that meet the criteria as set out in the Urban Regeneration and Housing Act, 2015 and on lands designated as regeneration areas, identified in Municipal District Local Area Plans, having regard to the Core Strategy, that are in need of regeneration, in order to prevent –

- (i) adverse effects on existing amenities in such areas, in particular as a result of the ruinous or neglected condition of any land,
- (ii) urban blight and decay,
- (iii) anti-social behaviour or
- (iv) a shortage of habitable houses or of land suitable for residential use or a mixture of residential and other uses”.

#### 4.3. **Cork County Development Plan 2022**

The Cork County Development Plan 2022 is now in effect. The Elected Members of Cork County Council have adopted the Cork County Development Plan 2022-2028 at the Full Council Meeting held on Monday 25th April 2022 and it came into effect on Monday 6th June 2022. Volume 4 South Cork includes references to Carrigtwohill and Volume 1 Main Policy Material references the Vacant Sites Levy for Residential and Regeneration Lands.

### 5.0 **Planning History**

#### 5.1. **Subject site:**

ABP-**313827-22** - 716 residential units (224 houses, 492 apartments), creche and associated site works. Case is due to be decided by 06/10/2022.

PA ref **195707** - The demolition of 1 No. derelict two storey dwelling and 1 no. derelict single storey agricultural storage building; the construction of 3 no. new school buildings and the construction of a main link road with a roundabout from Castl lake Housing Estate to Station Road and an additional link from the roundabout to Station Road

PA ref **184693** - Construction of a crèche of 581sq.m over one and two storeys, new entrance, carparking and boundaries, and all associated site development works.

PA ref **175399** and ABP reference PL04.**301610** – Permission refused for the construction of 277 residential units. Reason as follows:

*The "Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas" (Cities, Towns and Villages)" issued by the Department of the Environment, Heritage and Local Government in May, 2009, require a high quality approach to the design and layout of new housing. Having regard to the proposed site layout, and in particular the poor disposition and quality of public communal open space and future connectivity to Carrigtwohill Train station, it is considered that the proposed development would constitute a substandard form of development, would seriously injure the amenity for future occupants and, would, therefore, be contrary to the said Guidelines.*

*Furthermore, it is considered that the proposed development, including the revised proposal submitted by the applicant on the 1st day of October 2018, does not provide an appropriate architectural design response for the site. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.*

## 5.2. VSL History

ABP-300830-18 – Not a vacant site, as two different site outlines accompanied the Council's Notification to Enter on the Vacant Sites Register both with the same Vacant Sites Register number, the Board cannot be satisfied as to the vacant or idle status of the smaller site over the 12 months concerned which is the site that is the subject of the appeal.

## 6.0 Planning Authority Decision

### 6.1. Planning Authority Reports

#### 6.1.1. Planning Reports

- October 2020 – site history is outlined. The site forms part of the unfinished Castl lake development and the eastern portion comprises undeveloped land not in use for agriculture. The site is overgrown and unused. The site is situated in an area in need of housing (housing need assessment mentioned), the site is suitable for housing and the majority of the site is vacant. No Part 8 infrastructural consents are required to enable the land to be developed. Completion of link roads, site attenuation is required, the site is not affected by flooding.
- The site forms part of a larger land holding the area and it is recommended that this folio number is included in the VSR.

The report is accompanied by site photographs.

#### 6.1.2. Other Technical Reports

- None on the file.

### 6.2. Planning Authority Notices

- 6.2.1. A section 7(3) Notice issued on the 26 February 2021 referencing sections 5(1)(a) and 5(2) of the Act, advising the owner that their site had been placed on the register, accompanied by a site map.

## **7.0 The Appeal**

### **7.1. Grounds of Appeal**

- 7.1.1. The landowner has submitted an appeal to the Board, against the decision of Cork County Council to enter the subject site on the Register. The grounds of the appeal can be summarised as follows:

- The time period of twelve months did not elapse prior to the placement of the site on the register. This is because a total of 8 weeks (56 days) were removed from the timeline as a result of Covid 19 emergency measures. In particular, the suspension of the appropriate period/specified period between 29 March 2020 and 23 May 2020, SI 131/2020 and SI 165/2020 both refer.
- A large portion of the site is currently being developed as part of a school campus, PA ref 19/05707 refers. A commencement notice has been submitted in relation to phase 1 (roads) and the school will be started in Q3 2021.
- There is permission for a crèche on the site (PA ref 18/4693), the completion of roads will facilitate access to and development of the creche.
- The lands subject to Folio CK175491F, were granted permission for development by the Council but refused permission by the Board, ABP-301610-18 refers.
- Lockdowns and economic uncertainty from March 2020 have hindered investment, however, residential development plans on other lands are being reviewed and progressed to a permission in 2021.

### **7.2. Planning Authority Response**

- The southern portion of Folio CK175491F is zoned CT-C-01 Community, PA ref 19/5707 granted permission for a school. The northern portion is zoned



residential and capable of providing housing. At valuation stage only the residential portion was accounted for.

- PA ref 18/4696 for a crèche is located outside residentially zoned land and will not be considered at valuation stage.
- The refusal reasons relate to design with reference to ABP-301610-18, the principle of residential development is accepted on this site.
- The northern portion of the site is zoned residential and fully complies with the requirements of residential lands under the 2015 Act.

### 7.3. Further Response

None received

## 8.0 Assessment

### 8.1. Introduction

- 8.1.1. An appeal under section 9 of the Act, requires that the burden of showing that the site was not a vacant site for the 12 months preceding the date of entry on the Register is on the owner of the site. Section 9(3) of the Act states that the Board shall determine whether the site was 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. The subject site was entered onto the Cork County Council VSR on the 26 February 2021.
- 8.1.2. The Section 7(1) Notice was issued under the provisions of Section 7(1) of the Act, no evidence indicates that the owner responded to this notice. This notice has been issued under the provisions of Section 5(1)(a) of the Act which relates to 'residential' lands.
- 8.1.3. 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.
- 8.1.4. 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”.*

8.1.5. 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.*

8.1.6. 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.*

8.1.7. I will consider each of these criteria in turn. I will then address the appellant's contention that the appropriate period of twelve months did not elapse prior to the placement of the site on the register, as a result of Covid 19 emergency measures. In addition, the appellant raises issues about school, crèche, road and future residential development on the site and these matters require attention.

## 8.2. The Need for Housing

8.2.1. Section 6(4) of the act sets out the criteria to be considered when determining if there is a need for housing in the area. I note in this instance, there is a certain lack of information on the file to support the contention of the Planning Authority that the site is located in an area of need of housing. Notwithstanding this however, I acknowledge that this matter was given consideration in a Housing Need Assessment prepared by the planning authority, of which I have not had sight. The appellant has not contested that there is a need for housing in the area and this is further reinforced by existing residential development and the existence of a live planning application for very large residential development on the site, ABP-313827-22 refers.

8.2.2. I note, however, that a significant portion of the site is not zoned for residential uses, the southern portion is subject to a zoning objective that favours educational facilities. Specifically, I point to section 6(4)(a), that states:

*A planning authority, or the Board on appeal, shall determine whether or not there was a need for housing in an area within the planning authority's functional area for the purposes of this Part by reference to—*

*(a) the housing strategy and the core strategy of the planning authority,*

8.2.3. It is clear in my mind that the Council's housing strategy and the core strategy did not consider the provision of housing on anything other than lands zoned for residential purposes. The primary reason to zone lands for residential purposes is because the housing and core strategies of the Council have led to the rational and informed land use strategy for the county. In this instance, though a Housing Needs Assessment might identify that there is a housing need on that part of the land zoned residential, there is no such housing need on land that is not zoned for residential purposes.

### 8.3. Suitable for Housing

8.3.1. The northern portion of the site is zoned for residential uses and the southern portion is zoned CT-C-01, that is land to provide for education uses. In my opinion, this presents a serious obstacle to the placement of the site (VS0021 Folio Ref CK175491F) on to the register. Vacant sites gain entry to the register because they are either residential or regeneration lands. In this instance the site is not designated as regeneration and so that criteria can be discounted. The 2015 Act is very clear about what lands should be included on the register; section 3 of the Act defines 'residential land' as:

*'land included by a planning authority in its development plan or local area plan in accordance with section 10(2)(a) 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;'*

8.3.2. The site has been included on the register by the planning authority under section 5(1)(a) because it is zoned as residential. This would be in accordance with the County Development Plan Objective ZU 5-1 Vacant Site Levy-Residential and Regeneration Areas if the all the lands were zoned residential. My interpretation is that the vacant site levy only applies to lands in need of regeneration (not this site) or lands zoned for residential purposes. The appeal site includes lands that are not zoned residential and cannot yield residential units. In this respect the planning authority observe that the lands within the site that have a zoning objective to provide educational facilities will be discounted from any valuation calculation. Whilst this realisation is commendable, it really should not form part of the overall assessment of whether the site is placed on the register. When in this case a major portion of the site is not zoned residential and could not ever be placed on the register in the first place, in accordance with the 2015 Act. Additionally, I point to section 6(5)(a), that states:

*A planning authority, or the Board on appeal, shall determine whether or not a site was suitable for the provision of housing for the purposes of this Part by reference to—*

*(a) the core strategy,*

8.3.3. It is clear in my mind that the Council's core strategy did not inform the provision of housing on anything other than lands zoned for residential purposes. Other aspects of section 6(5) are met insofar that the site was served by public infrastructure and facilities, and no single thing affected the physical condition of the land that might affect the provision of housing. However, it would seem logical to me that only lands that are zoned for residential purposes should be included within the boundary lines of any vacant site under section 5(1)(a) of the Act. I am not satisfied that the entire site as it has been outlined, can be considered for inclusion on the register because a significant portion is not zoned and therefore not suitable for housing and would depart from the definition of residential lands set out by section 3 of the 2015 Act.

#### 8.4. **Vacant or Idle**

- 8.4.1. In terms of section 5(1)(a)(iii), that the site, or the majority of the site, is vacant or idle, at the time of my site visit, I noted that significant amounts of construction activity are taking place on site and in the wider area. Roads have been constructed, though not yet operational and construction activities are ongoing. The appellant confirms this view by stating that the school campus will near completion soon. However, at the time that the site was placed on the register, the planning authority confirmed that no activity had taken place and the site was vacant and idle.
- 8.4.2. The appellant has not advanced any actual use for the site during the relevant period and leans heavily on a perceived administrative inadequacy on the part of the planning authority that the twelve month period of assessment had not been allowed to elapse fully prior to the placement of the site on the register. This contention is expanded upon by the appellant in terms of the Covid 19 emergency measures that persisted throughout 2020 and that up to 56 additional days had not been accounted for by the planning authority. I can see that the first site visit by the planning authority took place on the 4 December 2017 and a subsequent site visit took place on the 9 October 2020. Considerably more than twelve months had been allowed to elapse before the site was considered for inclusion on the register. Even if the amount of time that was required to be disregarded in terms of any statutory or appropriate periods allowed for by the Emergency Measures in the Public Interest (COVID 19) Act, 2020, where to be applied, much more than twelve months had passed and so I find that the placement on the register in terms being vacant or idle and the appropriate period is acceptable.

## 8.5. Other Matters

- 8.5.1. The appellant has raised matters to do with ongoing development of the site for a school campus and the probable development of a permitted crèche on the site. In addition, future development of the lands for residential purposes is being considered after the hiatus presented by pandemic restrictions and economic uncertainty. All of these matters are relevant to the development of the lands concerned but not directly relevant to the appeal in hand. I have already highlighted that I consider that the site should not be included on the register because a major portion of the lands are not zoned for residential purposes. For a variety of reasons, there has been a significant delay between the assessment of this appeal and its lodgement in March 2021. Irrespective, I note that this site and other lands to the east and west are the subject of a current strategic housing development application for 716 residential units, ABP-313827-22 refers. It is therefore evident that the appellants contention that planning consents to develop the lands for residential purposes have come to pass.
- 8.5.2. In the matter of a current planning application or indeed an extant planning permission for the site, the Act is clear; the test for inclusion is the past condition of the site from the date of entry on the Register. I refer to Circular Letter PL7/2016, Appendix 3, that states: *“where a vacant site has an extant planning permission associated with it, this should not be a consideration in determining whether to apply the levy.”* The exercise of preparing, lodging and receiving planning permission would not in any event protect the site from placement on the register.

## 8.6. Procedural Matter

- 8.6.1. I note that there are three concurrent sites that are the subject of a section 9 appeal to the Board, all of the sites share the same planning authority reference number – VS0021. Each site was served with a separate section 7(3) Notice with the same VSL reference number but with a different Folio reference number. I am satisfied that each appeal can be decided upon by the Board. However, correspondence communicated to the planning authority on the outcome of each appeal should reference the planning authority number (VS0021) and followed by the identifier of the Folio reference number and ABP reference number for absolute clarity.

## 9.0 Recommendation

9.1. I recommend that, given the requirements of section 9(3) of the Urban Regeneration and Housing Act 2015, the Board is not satisfied that the entire site at Terrysland, Carrigtwohill, County Cork can be considered to comply with the definition of residential lands as set out in the Urban Regeneration and Housing Act 2015 (as amended) and cannot be considered as a vacant site that would comply with section 14.5 Vacant Sites Levy of the Cork County Development Plan 2014, because the site includes a significant portion of lands not zoned for residential purposes. Therefore, the entry on the Vacant Sites Register on the 26 February 2021 shall be cancelled.

## 10.0 Reasons and Considerations

10.1. 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,
- (d) The entire site at Terrysland, Carrigtwohill, County Cork cannot be considered to comply with the definition of residential lands as set out in the Urban Regeneration and Housing Act 2015 (as amended) and cannot be considered as a vacant site that would comply with section 14.5 Vacant Sites Levy of the Cork County Development Plan 2014, because the site includes a significant portion of lands not zoned for residential purposes

The Board is not satisfied that the site was a vacant site within the terms and definitions as set out in the Urban Regeneration and Housing Act 2015 (as amended) for the relevant period and considers that it is appropriate that a notice be issued to the planning authority who shall cancel the entry on the Vacant Sites Register.

---

Stephen Rhys Thomas  
Senior Planning Inspector

August 2022