



An  
Bord  
Pleanála

## Inspector's Report ABP-309849-21

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<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 CK113189F).
<b>Site Owner</b>	Bowth Holdings Limited and Terrysland Property Developments Limited.
<b>Planning Authority Decision</b>	Place site on register.
<b>Date of Site Visit</b>	9 August 2022.
<b>Inspector</b>	Stephen Rhys Thomas.

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## 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 at Maple Lane and Bramble Close, to the south of the Cork to Midleton railway line. The lands are flat and comprise well maintained incidental open spaces between and to the rear of established housing. A power line traverses a part of the western portion 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 —

- (l) 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 Existing Built-up Areas.

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), crèche and associated site works. Case is due to be decided by 06/10/2022.

### 5.2. VSL History

None.

## 6.0 Planning Authority Decision

### 6.1. Planning Authority Reports

#### 6.1.1. Planning Reports

- October 2020 – site history is outlined. Site visits were carried out in December 2017 and October 2020. 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. Previous permissions for the site have now expired.

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. Parties notified included Browth Holdings Ltd, Terrysland Property Developments Limited.

- 6.2.2. A section 7(1) Notice issued on the 20 November 2020 referencing sections 5(1)(a) and 5(2) of the Act, advising the owner that it is the intention of the planning authority to place the site on the register, submissions invited and the notice was accompanied by a site map. Parties notified included Browth Holdings Ltd, Terrysland Property Developments Limited.

## **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.
- Large areas of the site are under powerlines and cannot be developed. Other areas of the site comprise open space and roads, these cannot be developed.
- Permissions for development (14/4669 and 14/4668) have now expired and economic uncertainty has meant no new applications have been lodged, but this may change in 2021. A large planning application is currently under consideration and may be lodged soon.

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

- The site is located lands zoned residential and the placement of the site on the register complies with the requirements of the 2015 Act.

### **7.3. Further Planning Authority Response**

A letter dated 24 June 2021 states that the planning authority have removed VS-0021 (Folio Reference CK113189F) from the register because the zoning objective for the site is under review during the draft county development plan process.

## 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 29 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. The Board should note that a letter dated 24 June 2021 states that the planning authority have removed VS-0021 (Folio Reference CK113189F) from the register because the zoning objective for the site is under review during the draft county development plan process. Understandably, given that there are three current appeals, all with the same PA reference number VS-0021, the letter was first filed under ABP-309851-21. This does not pose an issue for the Board, but it should be noted that the planning authority have removed the site VS-0021 (Folio Reference CK113189F) from the register.
- 8.1.8. However, in terms of completeness I will consider each of the criteria for placement of the site on the register, 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 future residential development on the site and this matter requires 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. It is clear in my mind that the Council's housing strategy and the core strategy resulted in the provision of housing on 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, lands have been zoned residential, housing permissions have been partially enacted in the past and a large housing development application currently occupies the site in question. I am satisfied that there is a housing need on land that is zoned for residential purposes, neither the planning authority or the appellant disagree.

## 8.3. **Suitable for Housing**

- 8.3.1. The entire site is zoned Existing Built-up Area for residential purposes. 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. In terms of the suitability for housing, the 2015 Act sets out criteria that must be met, section 6(4) refers:

*(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 of 2000) necessary to enable housing to be provided and serviced, and*

*(c) whether there was any thing affecting the physical condition of the land comprising the site which might affect the provision of housing*

8.3.2. The appellant has not raised any issue about the core strategy in relation to land use zoning or whether that site can be serviced by public infrastructure. However, issues are raised about the presence of overhead powerlines and existing open space areas that the appellant maintains cannot be developed. The planning authority note that previous permissions have expired and that the site is located on lands that are zoned for residential purposes. Powerlines do cross parts of the site but these are not necessarily a limiter to development proposals. For instance, I note that the proposed layout for ABP-313827-22 (SHD application) has been designed to leave a landscaped margin along its route. This would be common practice in many housing schemes where powerlines are present and in some cases powerlines are even undergrounded if practicable. I do not accept that the existence of an above ground powerline across a portion of a site is so significant that it would render the site unsuitable for housing.

#### **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 the site includes landscaped areas, roads and undeveloped lands. The appellant notes the characteristics of the site, but advances no other uses for the site. 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, were 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 the future development of the lands for residential purposes that is currently being considered after the hiatus presented by pandemic restrictions and economic uncertainty. 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 be included on the register because there is a need for housing, the lands are suitable for housing and that the site was vacant or idle. In addition, I note that this site and other lands to the east are the subject of a current strategic housing development application for 716 residential units, ABP-313827-22 refers. It is therefore evident that the appellant's hope that planning consents to develop the lands for residential purposes would happen soon, have now 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 submission of a correspondence from the planning authority dated 24 June 2021, that informs the Board that the site has been removed from the vacant site register, the entry of the site on to the 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 and its removal from the register by correspondence dated 24 June 2021,
- (b) The grounds of appeal submitted by the appellant,
- (c) The report of the Planning Inspector,

The Board has taken into consideration the correspondence from the planning authority dated 24 June 2021 that states that the site has been removed from the register, the Board considers that it is appropriate that a notice be issued to the planning authority who shall cancel the entry on the Vacant Sites Register.

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Stephen Rhys Thomas  
Senior Planning Inspector

August 2022