



Clare County
Development Plan
2023-2029

Draft Clare CDP 2023-2029 - Public Consultation Portal

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Volume 1

Core Strategy, Settlement Strategy and Housing

Volume 3(a) Ennis Municipal District Written Statements and Settlement Maps

Ennis/Clarecastle

Volume 3(b) Shannon Municipal District Written Statements and Settlement Maps

Volume 3(c) Killaloe Municipal District Written Statements and Settlement Maps

Volume 3(d) West Clare Municipal District Written Statements and Settlement Maps

Associated Documents

None of the above

Environmental Reports

None of the above

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Location Map



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Submission to the Draft Clare County Development Plan 2023-2029

Lands at Tulla Road, Ennis,
Co. Clare



DOCUMENT DETAILS



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1.

INTRODUCTION

We note that Clare County Council are in the review process of the existing *Clare County Development Plan 2017-2023* and preparation of a new development plan for the period 2023-2029 is underway. On behalf of our client, Drumquin Construction Ltd, we wish to make a submission in respect of the Stage 2 (Draft) of the *Clare County Development Plan 2023-2029* (hereinafter referred to as the Draft Plan) which was published on the 10th December 2021 and will be on public display until the 28th of March 2022.

We acknowledge that the development plan for the period 2023-2029 is being prepared in a changed context to the existing plan 2017-2023. New policy documents have been issued since the adoption of the *Clare County Development Plan 2017-2023*, in which there is a new hierarchy of spatial plans that support the strategies of the Development Plan. A more urgent national focus on climate change mitigation and adaption with implementation of the National Climate Action Plan will be required to guide the drafting of policy. Relevant policy documents that have supported the context of the Draft Plan include:

- Project Ireland 2040: National Planning Framework
- Regional Spatial and Economic Strategy for the Southern Region 2020-2032 ➤
- National Climate Action Plan

MKO have been appointed by Drumquin Construction Ltd. to prepare this submission on his behalf, to the Draft Clare County Development Plan 2023-2029, and in particular *Volume 3a Ennis Municipal District*. This submission is in response to the fact that the site is currently zoned for residential development in the Clare County Development Plan 2017-2023 and that it is proposed to down-zone the lands from *low density residential* to *strategic residential reserve* in the draft Clare County Development Plan 2023-2029.

2. SITE LOCATION & CONTEXT

2.1 Site Location & Description

The subject site is located in the Tulla Road on the eastern side of Ennis town with an access off the Tulla Road which is located west of the M18 junction 13 exit (see Figures 1 & 2). The lands are located approximately 3.5km east of Ennis Town Centre. The subject site has an approximate area of 2.8 Ha and has been partially developed under a previous permission at the site (more information on this matter is provided below). There are housing developments to the east and west of the site and permission has recently been granted for two housing development to the south of the site.



Figure 1: Site location in the context of Ennis town and existing development (site marked with star)



Figure 2: Lands the subject of this submission outlined in red

2.2 Amenities & Community Facilities

There are several shops, petrol stations, amenities and services within walking distance of the site, including a Pre-School (c150m), An Daingin and Knockanean Primary Schools as well as a Church, Fahy Hall Community Centre, a bakery and vets all within 5-10 minutes' walk of the site. Roslevan neighbourhood centre is located 800m to the west of the site and there is footpath connectivity on the Tulla Road linking the lands to the Town Centre.

3. PLANNING HISTORY

The subject site has established precedent in respect of planning permissions for residential development. Details are set out below:

Table 1 - Planning History

Pl. Ref. No	99/232
Development Description	190 houses, associated roads, site works and services, demolition of driving range. Roslevan and Knockanean, Ennis, Co. Clare
LA Decision	Refuse Permission
ABP Decision (Ref: 130815)	Grant Permission (07/08/2003)
Pl. Ref. No	10/21096
Development Description	Extension of Duration of permission for 190 houses, associated roads, site works and services, demolition of driving range. Roslevan and Knockanean, Ennis, Co. Clare
LA Decision	Grant Permission (16/12/2010)

The permitted development of 190-unit residential development (Ref: 99/232), which was partially implemented, expired in 2012. Aerial imagery illustrates that much of the critical infrastructural elements of the permitted development of the 190-unit scheme were developed between 2006 and 2012. The proposed access road was substantially completed, the site levels were raised to above 5.0MOD, as well as the installation of associated services such as sewerage and water connections. A bridge culvert as permitted under the permission was built to connect the western portion of our client's wider landholding at this location (R6) and the eastern portion which is the subject of this submission (LDR64). The open space pavilions were substantially developed as was a trapezoidal channel and river diversion. Surface water drainage elements of the permitted development were substantially completed. A degree of infilling of the lands, as permitted by P99/232, was completed such that the current levels on site are such that they are suitable for a residential development to be undertaken at this time. An updated FRA has been undertaken to support an updated residential development considering the amount of works completed and it concluded that the site is substantially within Flood Zone C and thus suitable for development. Irish water feasibility confirmation has been obtained and concludes that both water and sewerage connections can be facilitated. Both Sewerage mains and watermain are on site from previous development P99/232.

4. PLANNING POLICY CONTEXT

This submission has been prepared with cognisance to the following planning policy documents.

- National Planning Framework: Project Ireland 2040
- Regional Spatial & Economic Strategy for the Southern Regional Assembly 2020- 2032
- Clare County Development Plan 2017-2023 & Draft Clare County Development Plan 2023-2029

4.1 National Planning Framework: Project Ireland 2040

In 2018, the Government of Ireland adopted the National Planning Framework (NPF) entitled Ireland 2040 to succeed the National Spatial Strategy. The NPF comprises the Government's proposed long-term strategic planning framework to guide national, regional and local planning and investment decisions over the next 25 years. It is intended that the NPF will be a strategic document that will provide the framework for future development and investment in Ireland, providing a long-term and place-based aspect to public policy and investment, and aiming to coordinate sectoral areas such as housing, jobs, transport, education, health, environment, energy and communications, into an overall coherent strategy. The NPF has a number of National Policy Objectives (NPOs) that articulate delivering on a compact urban growth programme and are relevant to the proposed rezoning of the subject lands.

- NPO 1b relating to population growth in the region, with 340,000 to 380,000 additional people to 2040;
- NPO 3a deliver at least 40% of all new homes within the built-up footprint of existing settlements
- NPO 4 relating to attractive, well-designed liveable neighbourhoods; NPO 5 relating to sufficient scale and quality of urban development; and
- NPO 6 relating to increased residential population and employment in urban areas.
- NPO 33 prioritise provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location

There is a very significant population growth allocated to the Southern Region in which Ennis is identified as a Key Town – 340,000 to 380,000 to 2040. In order to facilitate this population growth there will be a requirement to develop large numbers of new houses and apartments in the region. Given Ennis is currently affected by the housing crisis, like most other big towns in the country, there is a considerable progress to be made in order to bring housing provision from its current under-supply to the level required to accommodate the population growth forecasts. However, it is important that more sustainable development patterns are established in order to facilitate targeted services and infrastructure investment.

It should also be noted that a report published by the National Investment Office – The Department of Public Expenditure and Reform '*Assessing the alignment of the National Planning Framework and National Development Plan*' has carried out a high-level assessment of the population projections and housing needs as outlined in the NPF. The Rebuilding Ireland action plan set a target to reach a delivery of 25,000 homes per year in Ireland. With the impact of Covid-19 on these targets, a revised estimate for housing was developed in December 2020, which stated that the average housing supply will need to increase to an annual average of 33,000. This should also be reflected in the zoning of the land for the town of Ennis which suffered from a reduction in housing supply due to restrictions introduced during the covid-19 pandemic.

4.2 Regional Spatial and Economic Strategy (Southern Region) 2020-2032

The Regional Spatial & Economic Strategy for the Southern Region 2020-2032 (RSES) was adopted on 31st January 2020. The purpose of the RSES is to support the implementation of the National Planning Framework and the economic policies and objectives of the Government by providing a long-term strategic planning and economic framework for the development of the region. Ennis has been identified as one of 6 large-scale Key Town in the RSES which are major centres for delivery of public services and are seen as;

- *Large population scale urban center functioning as self-sustaining regional drivers.*

Given the considerable scope for growth in these large-scale Key Towns, it is envisaged that local authorities should plan for population growth of more than 30% by 2040, to be provided within the existing built-up footprint of the town. More specifically, Ennis has several strategic attributes, these being its scale, it being a county town, its significant zone of influence and its synergy with Limerick, Shannon and Galway.

Its status in the Southern Region makes it an attractive place to live and work in and the provision of sufficient housing in the town is a priority to accommodate the predicted population growth. Clare County Council should ensure that sufficient lands are zoned for housing developments and that provision is made to allow for a wide range of housing types to be built to cater for different housing needs.

4.3 Land Use Zoning

4.3.1 Current Zoning (Clare County Development Plan 2017-2023)

The lands are currently zoned LDR64 (*low density residential*) in the County Development plan 2017-2023 as illustrated below in Figure 4.

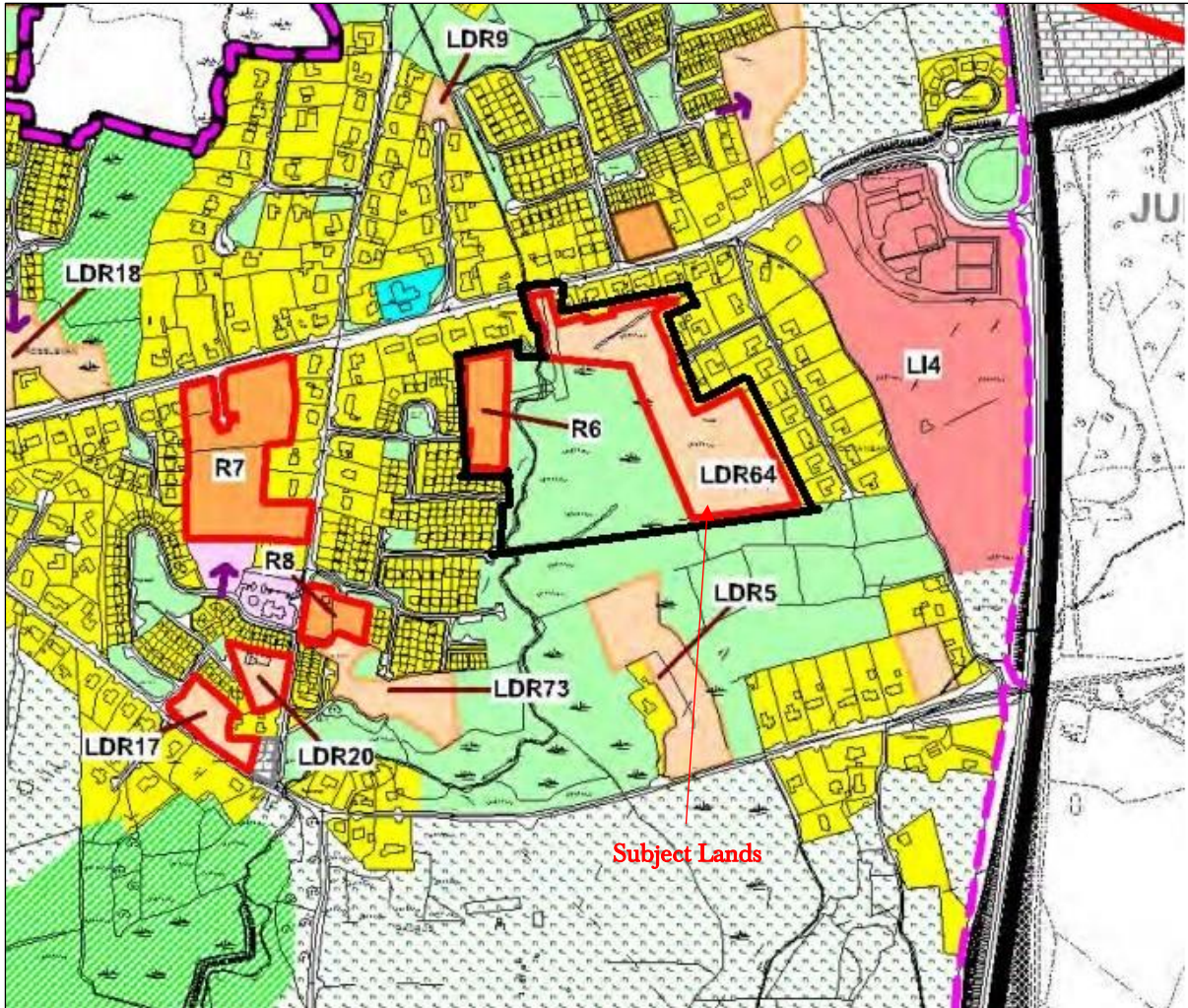


Figure 2 - Current Land Use Zoning LRD64

4.3.2 Draft Zoning (Draft Clare County Development Plan 2023-2029)

In the Draft Clare County Development Plan, it is proposed to zone the subject lands SR4 (*strategic residential reserve*), as illustrated below in Figure 5.

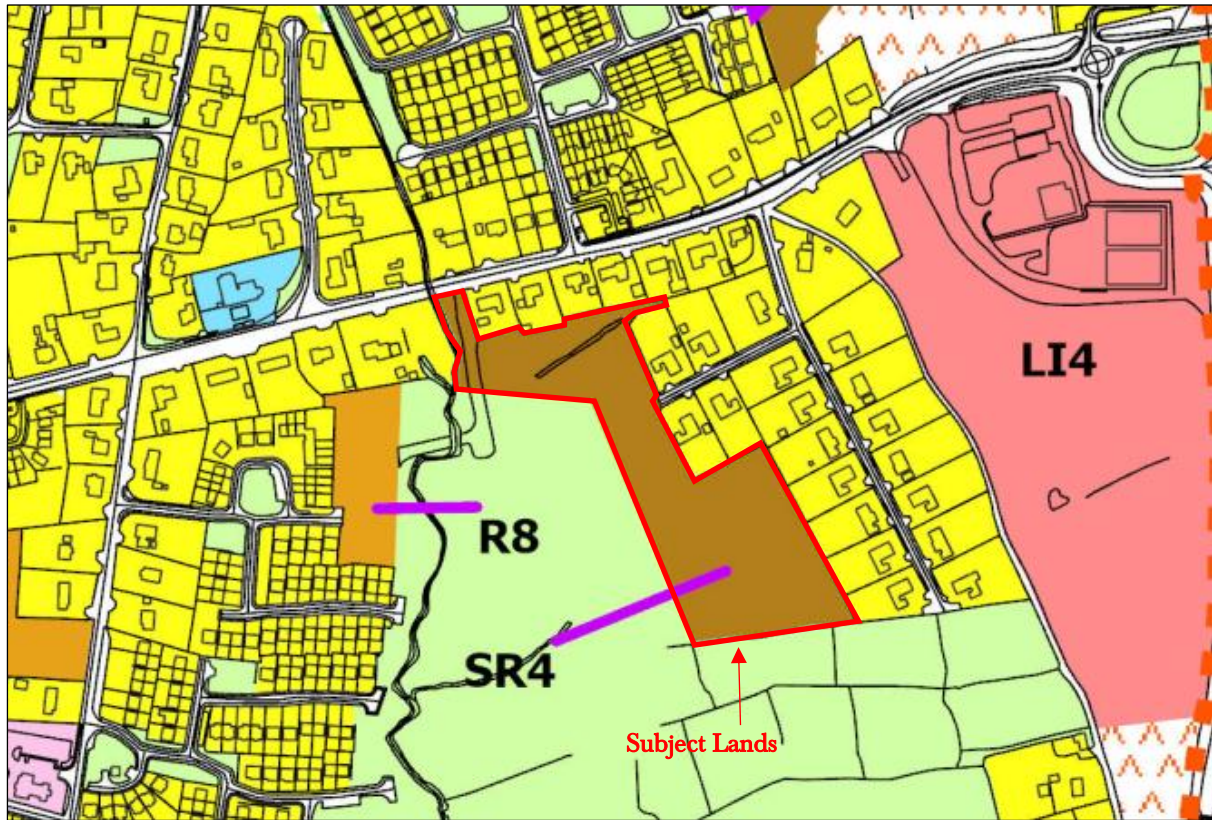


Figure 3 - Proposed Land Use Zoning

4.4 Draft Clare County Development Plan 2023-2029

In Ennis, it is estimated that population growth in excess of 30% will occur up to 2040 and sufficient residential land has to be zoned to accommodate this growth. This equates to a population increase of 2,705 people who are to be accommodated in 1,550 no. new residential units. In addition, 30% of these new homes will have to be built within the existing built-up footprint. The Draft Clare County Development Plan has zoned land for residential development in Ennis town to ensure the planned and sequential development of lands in a manner that complies with national and regional objectives for compact growth. Lands have been zoned for development that comply with the following planning and land use criteria (as per Serviced Land Assessment in Appendix 1 of Volume 3a)–

- > Compact Growth,
- > Public Transport
- > Co-ordinated development

Factors like Roads, Footpath, Water Supply, Waste Water were also taken into consideration. It should be noted that the subject lands benefit from all of the above. It is also highlighted in the draft plan that a “*broad choice of housing options for the diverse needs of the towns’ population profile*” is needed in the town.

The draft plan has four different zonings for residential development:

- > Existing residential (yellow)
- > Residential (orange)
- > Low density residential (pale yellow)

➤ Strategic residential reserve (brown)

The subject site has been zoned SR4 in the draft plan (Strategic Residential Reserve). This reserve has been included as the Council are of the opinion that not all lands within the settlement boundary will be required to 2029, as per the Core Strategy. Lands contained in the reserve are considered suitable for residential development but will only be considered for development as part of the long-term sequential expansion of the settlement where appropriate. In some cases, development of these lands may be considered before 2029 where the “*where the Planning Authority is satisfied that the development of zoned land is progressing faster than expected and a shortage of available lands may arise or residential zoned land may not be delivered as expected and a shortage may arise during the plan period.*” The development of such lands will only be considered from April 2027, in order to give opportunity for zoned land to be developed and where it can be clearly demonstrated that a zoned parcel of land will not be brought forward for development due to infrastructural or other demonstratable constraints. While the principle of the strategic residential reserve is considered a useful tool for ensuring the supply of suitable residentially zoned lands in the future, it is evident that an infill, brownfield site with a precedent of permitted residential development should be prioritised for development immediately. LDR64 is one such site.

4.5 Vacant Sites Register

Despite the fact that the subject lands are proposed to be zoned ‘*strategic residential reserve*’, which precludes their development until 2027 at the earliest, the site has also been included in the Council’s Vacant Site Register under the provisions of the Urban Regeneration and Housing Act 2015, as a site which is “*suitable for housing but has not been put forward for development.*” Objective CDP17.9 states that these areas for development and renewal are identified, in order to prevent:

- *Adverse effects on existing amenities in such areas, in particular as a result of the ruinous or neglected condition of any land,*
- *Urban blight and decay*
- *Anti-social behavior*
- *A shortage of habitable houses or of land suitable for residential use or a mixture of residential and other uses*

It should be noted that our client previously appealed the inclusion of the subject site on the Clare County Council Vacant Site Register (R303696). The Board’s Inspector concluded that the site should be removed from the Vacant Sites Register in June 2019 due to an administrative error (See Inspectors Report in Appendix 1). However, Clare County Council have since sought the inclusion of the subject site on the register. It is important to note that when assessing the subject lands in 2019, the Board’s inspector was of the opinion that the site was suitable for residential development, that there is a demand for residential development in this area. It was also stated in the report that the site is consistent with the core strategy and represents an “*infill/sequential approach to development.*” An Bord Pleanála inspector’s report is independent validation that this site is a prime development site, with a positive planning history for residential development that meets all the criteria for inclusion as lands suitable for residential development. The site is fully serviced with on-site water main connections, sewer connections, road formations and vehicular entrance. The site is included on the Vacant Site Register and it seems incomprehensible to our client that such lands are not proposed for residential zoning in the draft plan.

5. DEVELOPMENT PROPOSALS AT THE SITE

As the Planning Authority is aware, our client is in the process of preparing a Large Scale Residential Development (LSRD) planning application at the subject site and including lands to the east for a residential development and childcare facility under the current County Development Plan (see Figure 6 below for draft Site Layout). The preliminary LRD meeting took place with Clare County Council on 22nd March 2022 (PI2238). It is considered that this demonstrates our client's intention to develop the lands in the event of a successful outcome to the planning application process. We would respectfully suggest that it would not be prudent to down-zone lands which the Planning Authority are aware are the subject of pre-planning consultations for residential development and where a planning application for same is imminent.



Figure 6: Draft site layout of LSRD proposal at the site for residential units and childcare facility

6. ASSESSMENT OF SUBJECT SITE

The purpose of this section is to provide an assessment of the subject site against the criteria utilised by Planning Authorities in the identification of appropriate land for new residential development and as set out in Section 4 of the – *Development Plans: Guidelines for Planning Authorities 2007* published by the Department of Housing, Local Government and Heritage. The key criteria from this document will be set out below and an assessment of the proposed development provided against same. These criteria are as follows:

- Need
- Policy Context
- Capacity of Water, Drainage and Roads Infrastructure
- Supporting Infrastructure & Facilities
- Physical Suitability
- Sequential Approach
- Environmental and Heritage Policy

In the interests of conciseness an abridged version of the narrative set out in the Guidelines is provided below. It is also noted that the Department of Housing, Local Government and Heritage published a draft of an updated *Development Plan Guidelines for Planning Authorities* in August 2021. It is considered that the subject lands meet the criteria set out in the draft document as they relate to the zoning of lands for residential development.

6.1 Need

The Guidelines state the following in respect of need:

‘The amount of land to be zoned for any particular land-use must be clearly based on, and justified by, a realistic assessment of need. The survey and analysis stage of plan preparation should provide the baseline data to determine future land requirements. A number of factors need to be taken into consideration when determining the location and quantity of land to be zoned.’

6.1.1 Assessment

As outlined in Section 4.4 above and the Core Strategy included in the Draft Clare County Development Plan there is an identified population growth of 2,705 people over the duration of the upcoming development plan (2023-2029) who are to be accommodated in 1,550 no. new residential units in Ennis. It is considered that there is an obvious and identifiable need for lands to be zoned for residential development at appropriate locations such as the subject lands and in particular lands that have benefited from planning permission in the past and are in effect infill, brownfield sites, surrounded by existing residential development. Additionally, the subject site is a significant part of a commenced Large Scale Residential Development application and is owned by a construction and development company who intend to develop the site within the next 2 years. Such development will also provide wider planning gains, such as a sewerage connection to the Tulla Road, and a large amenity area within the proposed development (see figure 6)

6.2 Policy Context

The Guidelines state the following in respect of Policy Context:

‘Both the amount of land to be zoned for development and the proposed location of that land will also need to be influenced by other plans and strategies, from national and regional to local levels so that local authorities play their full part in supporting the implementation of those national and regional strategies.’

6.2.1 Assessment

Section 4 above provides an overview of the national and regional planning policy context which are relevant to Ennis. These policy documents provide a very clear direction in relation to the requirement to accommodate very significant population growth within existing settlement in the coming years. The zoning of the subject lands and their beneficial development in terms of providing housing would accord with the relevant national and regional planning policy context.

6.3 Supporting Infrastructure & Facilities

The Guidelines state the following in respect of Supporting Infrastructure & Facilities:

‘Consideration must be given to the future availability of, or the capacity to provide, supporting infrastructure, such as community facilities, health-care, schools, public open space, retail and other service provision and public transport when allocating land for development.’

6.3.1 Assessment

The site is located within an established residential area within walking distance of several amenities and services such as the Roslevan Neighbourhood Centre towards town and filling station with Spar shop to the east. The site is located close to two primary schools (An Daingin and Knockanean primary schools) and is a short walk to the local football club. As outlined in Section 3 above, services such as sewerage and water connections have been constructed on the subject lands.

6.4 Physical Suitability

The Guidelines state the following in respect of Physical Suitability:

*‘The development plan should strive to ensure that the form and location of new development offers the best “value for money” in terms of efficient use of **existing infrastructure**, while minimising the need for costly new infrastructure. Where land in green-field locations is to be zoned, account should be taken, in considering the different options available, of the land’s capacity for development by way of the most cost-effective means of providing the necessary infrastructure..... It is also vitally important to take account of the physical suitability of lands for development, notably lands subject to, or with potential impacts on, flood risks’*

6.4.1 Assessment

There is existing infrastructure (water and sewer) on this site and serving the site. A substantial degree of infilling of the lands, as permitted by P99/232, has been completed such that the current levels on site are such that they are suitable for a Residential development to be undertaken at this time.

6.5 Sequential Approach

The Guidelines state the following in respect of the Sequential Approach:

In order to maximise the utility of existing and future infrastructure provision and promote the achievement of sustainability, a logical sequential approach should be taken to the zoning of land for development:

- (i) Zoning should extend outwards from the centre of an urban area, with undeveloped lands closest to the core and public transport routes being given preference (i.e. ‘leapfrogging’ to more remote areas should be avoided);*
- (ii) A strong emphasis should be placed on encouraging **infill** opportunities and better use of **under-utilised lands**;*
- (iii) Areas to be zoned should be contiguous to existing zoned development lands.*

6.5.1 Assessment

It is considered that the subject lands would represent infill development on a brownfield site where works have already been carried out under a previous permission for development. The site is contiguous to existing developments to the east and is within walking distance of services, amenities and the town centre. The site is clearly under-utilised hence its inclusion on the Vacant Site Register

6.6 Natural Heritage

The Guidelines state the following in respect of Natural Heritage:

Local authorities have a key role to play in regard to preserving the natural heritage of their areas arising from the legal responsibilities placed on them and from the increasing public awareness of the importance of nature conservation at local level. In doing so they should also avail of opportunities that may arise to create or promote new features of biodiversity in the context of new developments.'

6.6.1 Assessment

The ecological and biodiversity value of the subject lands has been the subject of careful assessment as part of the process of preparing this zoning submission and the LRD planning application at the overall site. It is considered that the subject lands can be developed without any adverse ecological or environmental impacts.

7. SITE AVAILABILITY IN THE ROSLEVAN AREA

It is considered that, the draft plan is already out-dated in so far as it has not considered the following

- 1) Site R12 is now developed with housing, occupied and completed, and the final phase will be nearing completion spring 2022. This site should not be accounted for in the predicted population growth numbers as per the core strategy 2023-2029
- 2) R19 is currently under development (P21/992) and substantially taken with **a single house** on c0.5 ha site thus likely to deliver very little return in terms of units. The balance of the site is c0.80 ha and given the existing pattern of development would only yield c 10 houses.
- 3) Development has commenced at the LDR5 under permission granted for 40 units (P19/244 & P21/639) and is likely to be developed and completed in 2022. This site should not be accounted for in the predicted population growth number as per the core strategy 2023-2029
- 4) The LDR8 site has permission granted for a development of just **22 houses** (P20/158).
- 5) R20 and R5 have commenced development under P21/153 for **21 houses**, and should not be accounted for in the predicted population growth number as per the core strategy as they will be completed and occupied prior to the plan commencement in March 2023.

Roslevan has been identified as a key growth area and Neighbourhood for 20 years yet when the analysis above is considered, the only sites that remain to be entered into the planning process and developed are a fractured part of R19, R2 at Oakleigh woods and R8. Both R8 and R19 are better located to services and local centres than R2 but are very limited in size, the remainder of R19 is 0.80Ha and R 8 is 0.75HA. As currently proposed, the plan fails to zone an adequate quantum or variety of sites and locations in the Roslevan area. The plan relies heavily on the delivery of R2 which accounts for **c 95%** (19 Hectares) of the zoned residential lands for this important Neighbourhood. We contend that the combined R8 and SR4 sites would act as an appropriate counterbalance to R2 and provide for a variety of site sizes and house types at a suitable location. Consideration should be afforded to a better spread of locations should R2 not come to the market, fail in planning, be subject of legal review or dispute etc c 95% of the available zoned in this area could be unavailable if the site is for some reason remains undeveloped.

As R8 and SR4 are two parts of one previously granted development and are both the subject of a current LSRD application, both sites should be zoned residential to facilitate the coherent development of the Roslevan Neighbourhood.

8. SUBMISSION

On behalf of our client, Drumquin Construction Ltd, we wish to request that the area identified in Figure 7 below is zoned 'Residential' in the adopted Clare County Development Plan 2023-2029.



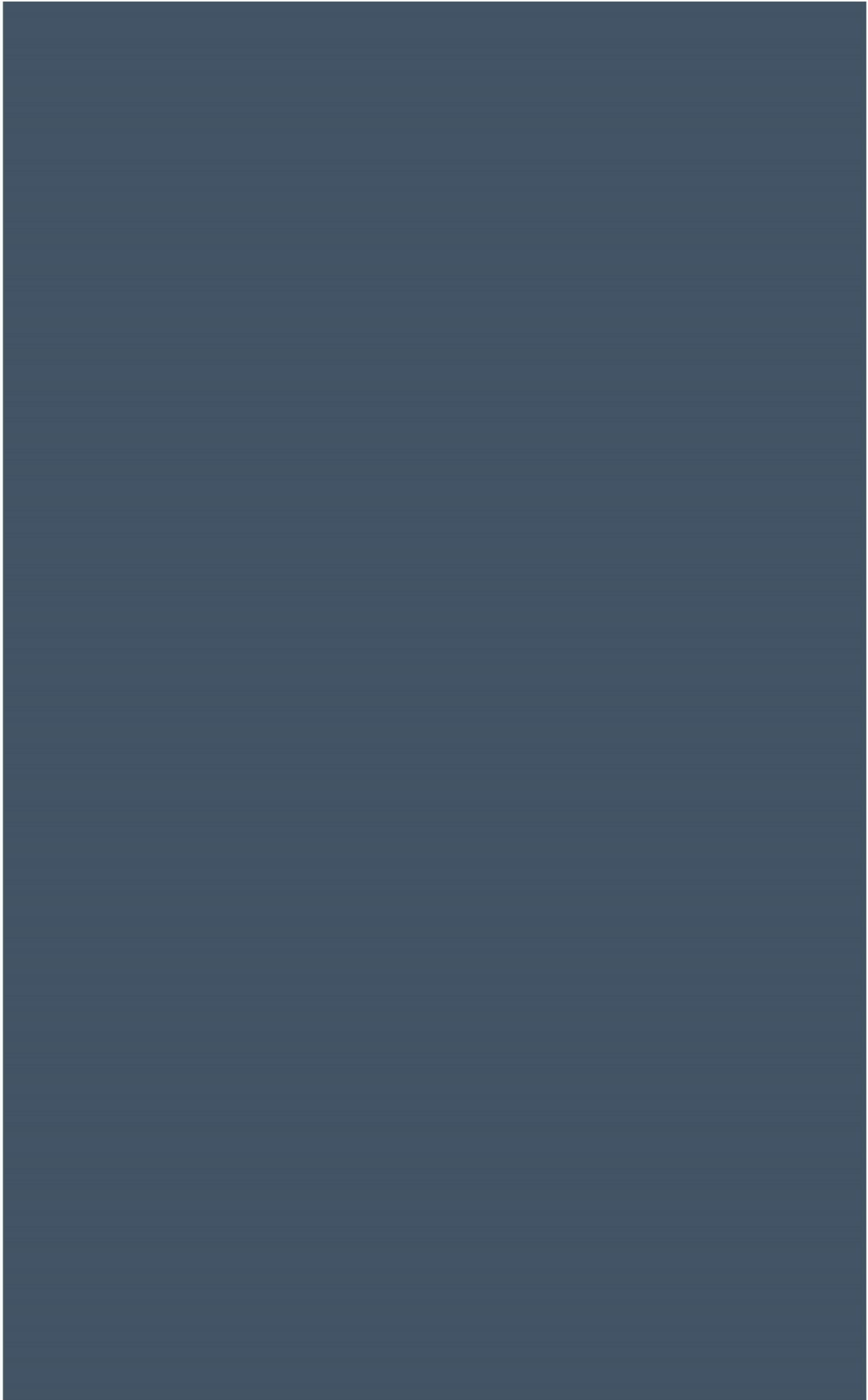
Figure 7: Subject lands outlined in red

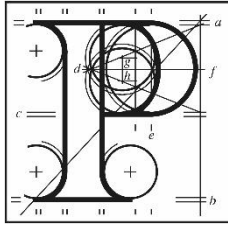
9. CONCLUSION

In summary, the main considerations for the zoning of the lands as ‘Residential’ are as follows:

- The subject site is located within the settlement boundary of Ennis
- The site is an infill site with established residential areas to the east, west and north and a recently permitted residential development to the south
- The site is a brownfield site and has the benefit of previous permissions for residential development for which significant groundworks have taken place and services installed. The site is also the subject of pre-planning consultations under the LSRD legislation (PL 22 38) and a planning application for residential development is imminent.
- An Bord Pleanála have considered favourably the principal of residential development at this location (PL58.130815 & R303696) and identified this as a suitable location for residential development when assessing whether the site should be placed on the vacant site register.
- The lands benefit from excellent pedestrian connectivity to the town centre as well as local amenities and community facilities.
- There are a range of amenities, services and community facilities located within easy walking distance of the site
- The development of this site will lead to substantial planning gains for the area namely a sewerage connection to the Tulla Road, and a large amenity area within the proposed development,
- The Core Strategy set out in the Draft Clare County Development Plan identifies a very significant requirement for new homes in Ennis over the lifetime of the Development Plan, this demand has been exacerbated by the Covid-19 pandemic.
- It is considered that the Core Strategy of the draft plan is fundamentally flawed, in particular for the Roslevan Neighbourhood, and that the actual situation with regard to sufficient land being zoned for development has not been properly assessed or that the assessment is already outdated by developments that have been completed or are under construction since the Core Strategy was undertaken. (see section 7).
- Residential development at this location will consolidate existing residential development in the area and will contribute to the compact growth of Ennis
- Residential development at this location would accord with National and Regional policy objectives and the criteria for zoning lands for residential development set out in the *Development Plans: Guidelines for Planning Authorities 2007*.
- The recent developments in Ukraine has resulted in increased pressure on accommodation in Ennis and Clare. Over 1500 persons have located in Clare so far and predictions of up to 8,000 are possible. Many will locate to Ennis and no provision has been accounted for such a rapid and unexpected population spike in the proposed plan.

We trust that the above submission will be given due consideration in the preparation of the Clare County Development Plan 2023-2029.





An
Bord
Pleanála

Inspector's Report

ABP-303696-19

Type of Appeal	Section 9 Appeal against section 7(3) Notice
Location	LDR 64 Tulla Road, Ennis, Co. Clare
Planning Authority	Clare County Council
Planning Authority VSL Reg. Ref.	VSR17
Site Owners	Padraig Howard and Evan Duggan
Planning Authority Decision	Place on Register
Date of Site Visit	31 st May 2019
Inspector	Joanna Kelly

1.0 Introduction

- 1.1. This appeal refers to a section 7(3) notice issued by Clare County Council dated 3rd January 2019 with the Register stating that the site was placed on same on 20th December 2018. The Notice states that the site at LRD 64, Tulla Road, Ennis, Co Clare has been entered on to the Vacant Sites Register (VSR) under Reference VSR 17, 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) and 6(4) of the URH Act 2015.

Folios no's CE3567, CE43133F, CE52158F apply to the site. The lands are owned by two different persons, Mr. Evan Duggan and Mr Padraig Howard.

2.0 Site Location and Description

- 2.1. The site is located to the eastern end of Ennis Town centre with an access off Tulla Road which is located east of the M18 junction 13 exit. No site area is provided in the documentation. The site is an irregular shape and consist of backlands bounded by residential uses to the north and east. Tulla Road is characterised predominantly by detached bungalow/dormer housing. The Hillcrest estate is located to the east. The south and western boundaries bound greenfield sites. It is noted that there is a drainage channel to the eastern boundary of the site and the land is significantly overgrown. There are large pipes evident on site suggesting the site has been disturbed overtime. There is evidence of a track from Tulla Road through the site.

3.0 Statutory Context

3.1. URH ACT

- 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) and 6(4) of the Act. Two Notices dated 3rd and 14th January 2019 were issued to Padraig Howard as the first was returned by An Post to the Council was the correspondence was not collected. Each notice was accompanied by a map

outlining the extent of the site to which the Notice relates. I note that on the Register, a copy of which is included in the documentation, it states that the site was placed on the Register on 21st December 2018. I note that there is no documentation on file from the Council which confirms that notices were issued to Evan Duggan. An email 14/02/2019 from ABP to Clare County Council sought letters to the landowners. There is no correspondence on file from Evan Duggan.

3.1.2. It is noted that the definition of vacant or idle has been amended by Section 63 of the Planning and Development (Amendment) Act 2018 which commenced upon coming into effect of the Act. 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”.

3.2. **Development Plan Policy**

The site is zoned for low density 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. This zoning refers to the use of lands to accommodate a low-density pattern of residential development, primarily detached family homes. Section 16.2.8 of the Plan refers to lands identified as areas on which the Vacant Site Levy can apply with site LDR64, 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 LDR 64 zoned land on Tulla Road specifically included.

I note that the planning authority has referred to the address as Tulla Road. The Ennis Municipal Plan in section 1.6.4 refers to LDR64 lands at Tulla Road however, section 2.3 refers to Site LDR64 noting the address as Anstand Gaurus/Ballymacahill. The appellant in this instance has also raised issue regarding incorrect address.

4.0 Planning History

File Ref. No. 10/21096 An extension of the duration of the planning permission that was granted under ABP PL.130815 for the construction of 190 houses. This permission expired on 17th October 2018.

5.0 Planning Authority Decision

5.1. Planning Authority Reports

- An Assessment Vacant Site Report, signed on 1 November 2018 and co-signed on 7 November 2018 was prepared for the site which describes the site with photos of same, details of planning history and notes that a site inspection was carried out on 17 October 2018.
- In respect of ownership it refers to the lands being owned by two people Mr. Evan Duggan with folio no. CE8389F and CE43133F applying to the land. Mr Padraig Howard owns the lands with Folio no. CE52158F applying. It refers to sections 5(1)(a) and 5(1)(b) of the Act and to Section 5(2).
- In a section entitled criterion it states that the site is greater than 0.05ha, is not a person's home, the site is zoned residential, is situated in an area where there is a need for housing with reference to the housing needs assessment for Ennis carried out by the PA in 2018, is suitable for housing and in response to the question as to whether the site has been vacant or idle as per Section 5(1)(a)(iii) for a period of 12 months, it is stated yes. It is stated that the site is not

regeneration land with the response to questions relating to regeneration stated N/A.

- It is concluded that the site is zoned for low density residential use, deemed suitable for residential use, suitable for the provision of housing for the purposes of the act and with reference to the core strategy, public infrastructure and its physical condition. It is stated that the site is deemed to be a vacant site as per Section 5(1)(a) of the Urban Regeneration and Housing act 2015 as amended. The site is deemed suitable for inclusion on the Register.
- A section 7(1) notice was issued on 8th November 2018 to site owner which I note also refers to regeneration lands as well as residential.
- A second report dated 18 December 2018 states that no written submission under section 7(1) of the Urban Regeneration and Housing Act 2015 as amended was received and that that the site be entered onto the Register.

5.2. Planning Authority Notice

Planning Authority decided under section 7(3) to issue a notice on 3rd January 2019 referencing sections 5(1)(a) and 6(4) of the Act and stating that the site has been entered onto the Vacant Sites Register.

6.0 The Appeal

6.1. Grounds of Appeal

An appeal was received from McCarthy Keville O'Sullivan on behalf of Padraig Howard which is summarised as follows:

- Appeal two notices received from Clare County Council (Site ref. Clare VSL 10 and VSR17) relating to landholdings at Tulla Road, Ennis.
- The landholding in question is made up of 3 no. seperate land registry folios (CE2158F, CE3567 and CE43133F).
- It is set out that Folios CE3567 and CE43133F are not in the ownership of Padraig Howard and it is considered that the notice issued by Clare County Council in respect of VSL 17 is invalid and for this reason should be withdrawn.

- The only lands in the ownership of Padraig Howard are Folio CE52158F and it is noted that the landholding addresses specified by the Planning Authority in their correspondence are incorrect.
- The lands CE52158F were purchased in 2007 and are in negative equity.
- This situation would be exacerbated by the levying of a charge by the planning authority.
- There are significant site-specific development constraints which make the delivery of housing difficult.
- The lands are located immediately adjacent to the Fluvial Flood Extents and the potential effect of this flood risk zoning designation will require careful investigation before a development proposal can be brought forward.
- This designation adds a level of risk to any development proposal on the lands both in terms of actual flood risk but also concerns relating to drainage and servicing of the site.
- In order to access the lands from the existing vehicular access it will be necessary to traverse an area of land zoned 'Open Space'.
- The zoning matrix indicates that this would 'not normally be permitted'.
- It should be noted that a submission was made during the preparation of the current development plan seeking a corridor of residential zoning to facilitate a vehicular access to the subject lands but this zoning amendment was not facilitated.
- There is a development objective in the CDP stating that the subject lands should be accessed via the existing residential development to the west. These lands are not in the ownership of the Mr. Howard and the existing road is not taken in charge.
- The lands forms part of a wider landholding not in the ownership of Mr. Howard and it is considered that they should be developed as a whole in order to ensure the most efficient and sustainable development proposal for the wider site.
- The lands are zoned 'low density residential' which the CDP outlines as being suitable for development at a density of 5 units per hectare, the designation of which is at odds with national guidance.

- It is considered that the lands do not warrant inclusion on the Vacant Sites Register and request that this position be confirmed.

The Board should note that there are two parcels of land that form part of the Folio CE52158F, one parcel pertains to this VSL and the other pertains to lands further east which form part of VSR10 however the grounds of appeal would appear to pertain to both parcels of land comprising the one folio, consequentially some points raised in the grounds of appeal are not of relevance to these VSR lands.

6.2. PA response to Grounds of Appeal

It is noted that the Planning Authority indicate that the response refers to both File Ref. No. ABP303690 and ABP303696 even though they are different parcels of land pertaining to different Vacant Site Registry entries.

- The subject site is zoned for low density residential development as per the provisions of the Clare County Development and is considered to be a vacant site in accordance with section 5(1) (a) and 6(4) of the Urban Regeneration and Housing Act 2015.
- The appellant's points in terms of the subject vacant site being within three different land registry folio details are noted and notifications in terms of the provisions of the Act of 2015 were sent to all the relevant landowners.
- Zoning and negative equity issues are not a matter for consideration.
- As per the Strategic Flood Risk Assessment of the Clare CDP, part of this site is designated as being within Flood zone B and the site is adjacent to lands designated as Flood zone A. This does not preclude residential development on the entire area of the site.
- The SFRA noted that "the site is largely located within Flood Zone C, with encroachment of Flood Zone B in the northern section of the site as flood waters backs up from the south-west. Provided finished floor levels are above approx. 5mOD the site can be developed with low density residential development in Flood Zone C. The area within Flood Zone B failed the justification test and must be used for water compatible uses only.

- The careful investigation in terms of flood risk is a challenge however it does not represent anything affecting the physical condition of the land of which this site is comprised which might affect the provision of housing.
- Land owners dissatisfaction with a land use zoning is not considered sufficient grounds on which to deem a site not to be vacant.
- The Council appreciate the landowner's position and will monitor the site and if at any time the Council is satisfied that the site is not longer a vacant site, reconsideration can be given to the entry on the register in respect of that site.

7.0 **Assessment**

7.1. **Process**

- 7.2. There are a number of matters of process which I propose to address. Firstly, the matter of the 12 month period and notices to relevant landowners.

12 Month Period

- 7.3. I would refer the Board, in the first instance, to an issue pertaining in relation to the 12 month period prior to the placing of the site on the Register as per the Section 7(3) Notice currently appealed. Section 6(2) of the Act is very clear. It states that a planning authority shall enter on the register a description including a map of any site in its functional area which was, in the opinion of the planning authority, a vacant site for the duration of the 12 months preceding the date of entry. This is very clear. The subject site is stated to have been placed on the Register on 20th December 2018 with the Notice dated 3rd January 2019 meaning that the relevant 12 month period would have commenced on 21st December 2017. I would note that the reports prepared by the planning authority refers to a site inspection which informed their placing of the site on the register. In relation to the subject site it is stated in the report prepared to support the inclusion of the site on the register (site report dated 7 November 2018) that the site was inspected on 17 October 2018. I would also note that the report includes a list of criteria one of which asks if the site has been vacant or idle for a period of 12 months to which the response is yes with the conclusion of

the report that it is considered that the site has been vacant for a period in excess of 12 months.

7.4. Therefore, if the site was inspected for the first time for the purposes of the Vacant Site Levy process on 17 October 2018, the planning authority cannot categorically state that, in respect of the definition of vacant or idle in section 5(1)(a)(iii) of the Act, the site was vacant and idle on 21st December 2017 which would comprise the commencement of the 12-month period. While this may appear to be a tedious approach to the matter at hand, the Act is very clear that the relevant period for consideration is the 12 month period preceding the date of entry. It is incumbent on any planning authority to have details of inspections which can clearly indicate that in their opinion the site was vacant or idle for the 12 months preceding placing the site on the Register. It is not sufficient to assume so. I, therefore, recommend that the Notice issued should be cancelled on the basis of this defect in the process. I consider that the Planning Authority could recommence the process once they have evidence that the site has been vacant or idle for the period of 12 months preceding the placement of the site on the Register. I would also note that the Board has included this reason in their decision to cancel such Notices in a number of other instances.

7.5. **Notices to relevant Landowners**

The documentation submitted from Clare County Council indicate that three folios pertain to the lands identified as VSR 17. However, a copy of the notices on the file only confirm that one landowner, Mr. Pdraig Howard was issued with the relevant notices. ABP sought via email the letters to the landowner that advised them that the lands are to entered onto the Vacant Site Register. A response via email was received (and is on the file) indicating that the section 7(1) notices dated 8/11/2019 advised landowner of intention to enter on the register and section 7(3) notice dated 14/01/2019 advised landowner that they have entered on the register to which they could appeal. Copies of section 7(3) were attached. While the correspondence from ABP could have been more explicit in seeking all correspondence to all registered owners notified, I consider that pursuing this matter at this point is futile having regard to the recommendation above to cancel the notice on the basis of the defect in the 12-month period. It is also considered that the grounds of appeal pertaining to

the placing of the site on the register should have been circulated to all registered landowners in the interests of natural justice.

I therefore consider that in the absence of the required notices having being on both landowners i.e. Mr. Evan Duggan and Padraig Howard that the entry onto the register should be cancelled. It is open to the Council to re-start the process ensuring all relevant landowners are served the required notices.

Housing Need

7.6. While not specifically addressed I would note that the reports prepared by the Planning Authority refer to the site being situated in an area where there is a need for housing with reference to the housing needs assessment for Ennis carried out by the PA in 2018. This assessment indicates that the Core Strategy of the Clare CDP 2017-2023 estimate the population of Ennis in 2023 to be 33,497 people. This represents an increase of 3,166 households over the plan period based on a household size of 2.5 persons. The Housing Strategy identifies a need for 3,211 new houses to be delivered for Ennis by 2023 which is at variance to the number set out in the Core Strategy section. The Housing Section of Clare County Council confirm that the total households currently seeking social housing support in Ennis is 1,078. A section of the assessment deals with housing availability and indicates that the number of habitable houses available for purchase or rent is less than 5 per cent of the total number of houses in the area. The assessment also sets out the average monthly rent and average house price in Clare. In general, having regard to the provisions of section 6(4) of the Act I consider that there is sufficient evidence to determine that there is a need for housing in the area.

7.7. **Suitability for Housing**

(a) **The Core Strategy**

The subject land is zoned for residential development in the Clare County Development Plan 2017-2023. It is located in an established urban area adjoining existing residential developments. I consider that the land is consistent with the provisions of the core strategy and represents an infill/sequential approach to development.

(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.

This matter is not expressly dealt in the appeal or the planning authority's documentation. However, I note that the lands immediately adjoin existing residential developments which are served by public infrastructure. I note that the landowner raises concerns about provision of a vehicular access to the site over lands that are zoned open space. I do not consider that this is the case in respect of the lands that are identified as site LDR64/VSR17. Pursuant to site inspection, there is an existing entrance off the Tulla Road serving these lands and while I accept that the landowner in this instance may not have control over access to his portion of the lands comprising LRD 64, I am satisfied that the site is served by adequate public infrastructure including an opportunity for access necessary to enable housing to be provided and serviced and that the issue of access does not preclude the development of the site.

(c) Whether there was anything affecting the physical condition of the land comprising the site which might affect the provision of housing

I accept that the site characteristics are such that a site specific flood risk assessment will be required, however the provision of such and an appropriate design response would not in my opinion preclude the provision of housing on the site.

7.8. Vacant or Idle/Purpose of the Lands

In relation to the vacancy or otherwise of the site or part thereof, there are a number of considerations. Firstly, as outlined in Section 3.1 above, Section 5(1)(a)(iii) has been amended by Section 63 of the Planning and Development (Amendment) Act, 2018 which provides that it states that 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.”.

I will address both (I) and (II) in turn.

Vacant or Idle

- 7.8.1. The appellant does not contend that the site is not vacant or idle. However, having regard to the concerns outlined above in relation to the 12-month period I do not consider that the Board can categorically state that the site was vacant or idle for the 12-month period concerned and in this regard, I do not consider that it can be determined that the site is vacant or idle.

Purpose of the Lands

- 7.7.2 Section 63 of the Planning and Development (Amendment) Act, 2018 provides a revised definition of Section 5(1)(a)(iii) of the Act with subsection (II) included and referring to sites which are 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.”

I note that the details on file indicate that the landowner purchased the lands in 2007 which is considered to be after the subject lands were zoned.

8.0 Recommendation

- 8.1. I recommend that in accordance with section 9(5) of the Urban Regeneration and Housing Act 2015, the Board should cancel the entry on the register of site (VSR17) site at, Tulla Road, Ennis, Co. Clare was vacant or idle for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 20th December 2018 shall be cancelled.

9.0 Reasons and Considerations

Having regard to

(a) the information submitted to 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 Inspector,

(d) the 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, and

(e) the absence of documentation demonstrating that all registered landowners in respect of the lands LDR 64 at Tulla Road were notified as required

the Board considered that it is appropriate that a notice be issued to the planning authority to cancel the entry on the Vacant Sites Register.

Joanna Kelly
Senior Planning Inspector

18th June 2019

