



An
Bord
Pleanála

Inspector's Report ABP-300932-18

Type of Appeal	Section 9 Appeal against section 7(3) Notice
Location	Lands at Cloonmonad, Quay Road, Westport, Co. Mayo.
Planning Authority	Mayo County Council
Planning Authority VSL Reg. Ref.	VSL WT6/HLN Investments Ltd.
Site Owner	HLN Investments Ltd.
Planning Authority Decision	
Date of Site Visit	5 June 2018
Inspector	Una Crosse

1.0 Introduction

- 1.1. This appeal refers to a section 7(3) notice issued by Mayo County Council, stating their intention to enter the site at Cloonmonad, Quay Road, Westport, Co. Mayo (VSL WT 6) on to the Vacant Sites Register (VSR) in accordance with the provisions of section 6(2) of the Urban Regeneration and Housing Act 2015.
- 1.2. The site has five owners with five folios within the site registered under VSL reference VSL WT 6. Folio MY12850 owned by Patricia and Thomas Joyce; MY65484F owned by HLN Investments; MY33857 owned by Richard Grady; MY23642F owned by Martin Moran Builders; and MY26179F owned by Patrick & Kristen Wulz.
- 1.3. Four notices were issued by the Planning Authority to each of the owners save for Patrick & Kristen Wulz. The report states that the lands subject of Folio MY26179F (Patrick & Kristen Wulz) have not been subject as yet of the Section 7(3) notice.
- 1.4. Two appeals have been received on the site subject of this Notice – VSL WT 6 - this appeal made by HLN Investments Ltd under Ref. ABP-300932-18 and another appeal made by Richard Grady under Ref. ABP-300895-18.

2.0 Site Location and Description

The overall site to which the Notice relates has a combined area (by reference to the areas of the folios) of c.13.4 hectares. The site is along the Quay Road west of the town centre and extends from the Quay Road south to a lane that connects to the R335. There are a number of existing properties and estates adjoining the lands.

3.0 Statutory Context

3.1. URH ACT

- 3.1.1. While not specifically mentioned in the Notice issued the accompanying report has assessed the site on the basis of the tests outlined in Section 5(1)(a) of the Act which relate to residential lands.

3.2. Development Plan Policy

3.2.1. The site is zoned residential Phase 1 in the Westport Town and Environs Development Plan 2010-2016.

3.2.2. Housing Objective – HO-10 Westport Town Development Plan 2010-2016

Objective HO-10 states that it is an objective of the Council to encourage and facilitate the development of vacant and undeveloped residential lands through the use of all available tools and mechanisms, including the Vacant Site Levy, in order to support implementation of the Core Strategy and Settlement Strategy and the Interim Housing Strategy.

In this regard, residential lands where the Vacant Site Levy may be applied include:

1. All Phase 1 Residential lands in the Key Towns and
2. Any other residential zoned lands on which there is planning permission in respect of which substantial works have not been carried out within 3 years of the date of permission. These areas are shown on the maps titled "Residential and Regeneration Lands" which accompany the Area Plans. These areas will be examined in detail to determine if there are sites where the Vacant Site Levy is applicable under the provisions of the Urban Housing and Regeneration Act 2015.

4.0 Planning History

Ref. P15-645 – Withdrawn – 7 houses

Ref. 11 800008 – permission for 12 houses and access road – expired;

Ref. 11 800021 – permission for 3 houses – extended under 11 800210;

Ref. 08 800022 – 184 dwellings – granted – expired;

5.0 Planning Authority Decision

5.1. Planning Authority Reports

- A Draft Vacant Sites Assessment report was prepared which outlines the site and multiple ownership as I have outlined above.

- It is noted that the area of the site owned by Richard Grady (folio MY33857) was amended following the receipt of Mr. Grady's response to the initial notice with the area to which the proposed levy applies outlined in blue in an aerial photograph in the report with a stated area of 0.37ha. The area within and in vicinity of a domestic shed associated with Mr. Grady's dwelling has been removed from the area of the site proposed for application of the levy;
- It is further stated that the lands subject of folio MY26179F have not been the subject as yet of the Section 7(3) notice.
- The conclusion states that the lands are vacant and idle. It notes that the lands are zoned residential phase 1, the site is in excess of 0.5 hectares in compliance with the Act. It is stated that the site is deemed to be suitable for inclusion on the register.
- Need for Housing – (a) core strategy outlines need for 330 new units; (b) house prices and cost of renting houses in the area (Mayo) is outlined (source – daft.ie); (c) number of households on the waiting list – 203; (d) % of houses available for purchase or rent is 3.3% with assessment of (a) – (d) indicating that there is a need for housing in the area;
- Suitable for Housing - (a) core strategy outlines need for 330 new units; (b) site is serviced with public water and sewer and within zoned area; (c) nothing affecting physical condition of the land with an extant permission with site deemed suitable for provision of housing;
- Section 5(1)(a)(iii) – site or majority is vacant and idle;

5.2. Planning Authority Notice

Planning Authority decided under section 7(3) to issue a notice on 15 January 2018 stating that the site has been entered onto the Vacant Sites Register as of 1 January 2018. The notice was issued to Richard Grady, Patricia & Thomas Joyce, HLN Investments Limited & Martin Moran Builders (Newport) Ltd.

6.0 The Appeal

6.1. Grounds of Appeal

An appeal was received from HLN Investments Ltd which is summarised as follows:

- Enclose correspondence with Mayo County Council and response to same in which a Planning Reference number has been assigned (Ref. P1618008);
- Confirm that professional consulting team appointed to advance the property through the planning process and awaiting from Mayo County Council on the pre-planning enquiry process;
- Confirm that in process of submitting a pre-connection enquiry to Irish Water to ascertain availability of potable water and wastewater facilities required to advance through the planning process;

6.2. **Planning Authority Response**

No response received.

7.0 **Assessment**

7.1. **Introduction**

This notice has been issued under the provisions of Section 5(1)(a) of the Act which relates to residential although the Section 7(3) Notice does not specifically state this fact. The assessment undertaken which I outline in section 5.1 refers to the tests included for residential under section 5(1)(a) and by reference to Section 6(4) of the Act as is required for lands zoned for residential purposes. Prior to addressing the concerns expressly outlined in the grounds of appeal I have a number of procedural concerns with the Notice issued that I consider require the Board's consideration. I address each in turn in the next section.

7.2. **Issues Related to Notice**

- 7.2.1. Firstly, the Section 7(3) Notice issued under Ref. VSL WT 6 relates to a site which includes 5 ownerships with 5 separate folios of varying size and with varying means of access etc. The details of the ownerships of the folios is outlined in section 1 of this report. I would note that while only 2 of the owners issued with notices have appealed to the Board that given that one reference number has been used for the

accumulated site that the decision of the Board either to confirm or cancel would apply to all notices issued under that reference number – VSL WT 6.

- 7.2.2. Secondly, the Section 7(3) Notice was issued to 4 of the 5 owners of the separate folios with a note in the assessment undertaken by the PA that the lands subject of Folio MY26179F (owned by Patrick and Kirsten Wulz) have not been the subject as yet of the Section 7(3) notice. It is not clear why the owners have not been issued with a notice and if they were not to be issued with a Section 7(3) Notice at the same time as the other owners why their land was included.
- 7.2.3. Thirdly, following the issuing of a Section 7(1) Notice, the owner of folio MY33857 Mr. Grady responded to the PA outlining his concerns at the inclusion of part of his home and attendant grounds within the site. I would note that the grounds of Mr. Grady's appeal relate to the inclusion within the site of his domestic sheds and garden. I would note that the Act states at Section 2 that "site" means any area of land exceeding 0.05 hectares identified by a planning authority in its functional area but does not include any structure that is a person's home and that "home" is defined in the same section as, in relation to a person, means a dwelling in which the person ordinarily resides (notwithstanding any periods during which the dwelling is vacant) and includes any garden or portion of ground attached to and usually occupied with the dwelling or otherwise required for the amenity or convenience of the dwelling. Therefore I consider that Mr. Grady and the PA in their assessment were correct to remove this element of Mr. Grady's property from the site.
- 7.2.4. In the assessment carried out by the PA they note that the PA have considered the submission from Mr. Grady and revised an element of the site for the purposes of the levy and have included an aerial shot of the lands outlining the part of Mr. Grady's land (0.37 ha) which remains within the site for consideration with Mr. Grady's home and domestic sheds removed. However, the map attached with the Section 7(3) Notices issued to Mr. Grady and the subject appellant and others includes this area of ground which adjoins the Quay Road and which was proposed to be excluded by the PA. Therefore, the Notice which is before the Board refers to a map which includes land which the PA accept should be removed and which I note is the subject of Mr. Grady's appeal. The Board do not have any role or function in amending maps associated with Section 7(3) Notices. The Boards role is to confirm or cancel the Section 7(3) Notice before them. Therefore I would suggest to the

Board that in addition to the multiple owners and the failure to issue one of the owners whose lands are included within the map that the map accompanying the Section 7(3) Notice includes lands which are within the attendant grounds of the appellants house which Section 2 of the Act states should not have been included, which the PA have already acknowledged and the Notice should therefore be cancelled.

7.3. Proposal to Develop the Lands

While I note that the appellant references their intention to seek permission for the development of the lands and the pre-connection inquiry with Irish Water, I refer to Circular Letter PL7/2016, Appendix 3 where it is stated that 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. It continues that if such a site meets the criteria for a vacant site in respect of either residential or regeneration land, then the levy may be applied. If the site meets the criteria for inclusion on the register, the existence of a previous planning permission or an intent to apply for permission has no part to play. In this regard, the intentions of the owner to develop the site are not a relevant consideration.

7.4. Need for Housing

7.4.1. Notwithstanding the above and while the appellant does not reference the need for housing in their grounds of appeal, other appeals on sites in Westport which are currently before the Board question the need for housing and the evidence to support such a need with the contention proposed by the appellants that no such need exists (e.g. ABP-300897).

7.4.2. In this regard I would refer the Board to the tests outlined in Section 5(1)(a) of the Act which specifies the tests for residential land:

- (i) the site is situated in an area in which there is a need for housing,
- (ii) the site is suitable for housing, and
- (iii) the site, or the majority of the site, is vacant or idle.

7.4.3. Therefore in order to determine that the site is vacant or idle the Planning Authority must establish that there is a need for housing in the area. I would note that the

suitability of the site for housing has not been raised and given its zoning for same I do not intend to address the matter of suitability.

7.4.4. In terms of need for housing, the Act states at Section 6(4) that the need for housing in an area is to be determined by reference to:

- (a) the housing strategy and the core strategy of the planning authority,
- (b) house prices and the cost of renting houses 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 per cent of the total number of houses in the area.

7.4.5. The Planning Authority in their assessment therefore must address and establish the need for housing by reference to each of these matters. The assessment submitted by the Planning Authority includes a document entitled draft Vacant Sties Assessment report and appended to that is a document which seeks to respond to the questions put forward by Section 6(4) of the Act and I will address each in turn.

7.4.6. The first matter (a) relates to the housing strategy and the core strategy of the planning authority. The PA as summarised above refer to the Core Strategy whereby a projected population increase of 825 persons between 2014 and 2020 would require an additional 330 housing units. In relation to the housing strategy references is made to the interim housing strategy included in Variation No. 1 of the County Development Plan which estimated that 2,823 households will be in need of support in obtaining a house at the start of 2020. It is not stated how many of these households are in Westport.

7.4.7. While the appellant does not reference the specific elements related to need for housing, I would refer the Board to Table 1A from the core strategy which as the PA states shows that Westport requires 330 units to meet population targets from 2011-2020. I would note, however, that while the PA reference the requirements for 330 units they do not acknowledge the number of units that could be provided and the excess which are outlined in the core strategy. Table 1A which outlines the need for

330 units in Westport to cater for the projected population growth it also shows an excess in housing provision in Westport of c.885 units given that 1415 units could be provided immediately with 533 vacant units, 145 unfinished housing estates (I assume that is the figure of units within unfinished housing estates) and 737 permitted units that have yet to be constructed. In terms of the housing strategy the PA reference the interim housing strategy and the estimate of 2,823 households which will be in need for support in obtaining housing by 2020. As I note above this is a county wide figure and cannot be of any meaningful use when considering the needs of Westport. I would suggest to the Board that the housing strategy and core strategy would not indicate that there is a need for housing in this area that being Westport, given the excess in housing stock both existing and permitted.

- 7.4.8. The second matter (b) refers to house prices and the cost of renting houses in the area. While the appellant does not address this specific section I note that in the report appended by the PA to their assessment prior to placing the site on the register the data provided, sourced from www.daft.ie outlines rental and house prices for County Mayo sourced from Daft's Rental Price Report for Q1 of 2017 and the House Price Report for the same period. Values are also provided for quarters 3 & 4 of 2016 which indicate a quarter on quarter increase in both rent and house price costs. There are no details provided for Westport making the information provided of little benefit to demonstrating a need for housing.
- 7.4.9. The third matter in Section 6(4) refers to the number of households qualified for social housing support. In the report appended by the PA to their assessment prior to placing the site on the register, the data is stated to be based on the data from the housing needs assessment carried out by Mayo County Council in 2016 where it is stated that the waiting list in September 2-16 for Westport showed a total of 203. I would note that the appellant would not be expected to have access to such figures for the Westport area and in this regard the figures from the Planning Authority would appear to indicate the requirement for 203 social housing units.
- 7.4.10. The fourth matter in Section 6(4) refers to whether the number of habitable houses available for purchase or rent was less than 5 per cent of the total number of houses in the area. In the report appended by the PA to their assessment prior to placing the site on the register, the data is stated to be based on the data from the housing needs assessment carried out by Mayo County Council in 2016 where it is stated

that Westport and its Environs that 111 units were available for sale and 10 available for rent and that this figure comprise 3.3% of the total housing stock of 3584.

The appellants do not specifically address this matter in their appeal, as their grounds relate to housing need in general. Notwithstanding, as the criteria in Section 6(4)(d) refers to properties available for purchase or rent which in this instance would refer more reasonably to the number available on the likes of daft where I found that within the Westport and Westport Quay area there were 192 properties available for Sale and 4 properties available to Rent which is c. 5.4% of available stock. While this would appear to take it above the 5% it is difficult without a more detailed examination of the Planning Authority's rationale it is difficult but to consider both the PA and my figures as arbitrary.

7.5. Conclusion

The procedural issues outlined above are sufficient to determine that the notice should be cancelled. Furthermore, and notwithstanding that the appellant has not specifically referenced the need for housing in the area, it is clear from the assessment outlined above that the PA have not demonstrated a need for housing in the area. In fact it is clear from the Core Strategy contained within the County Development Plan that there is a considerable excess of housing units either constructed or permitted to facilitate the demand which may arise from the projected growth.

8.0 Recommendation

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 (VSL WT 6) at Cloonmonad, Quay Road, Westport, Co. Mayo was vacant or idle for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 1st January 2018 shall be removed.

9.0 Reasons and Considerations

9.1. 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, and

(d) the procedural errors in relation to the Map issued with the Section 7(3) Notice and

(e) the evidence outlined in relation to the need for housing in the area.

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.

Una Crosse
Senior Planning Inspector

June 2018