



An  
Bord  
Pleanála

## Inspector's Report ABP-303380-19

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<b>Type of Appeal</b>	Section 9 Appeal against section 7(3) Notice
<b>Location</b>	Harbour Street, Link Road, Mullingar, Co. Westmeath.
<b>Planning Authority</b>	Westmeath County Council
<b>Planning Authority VSL Reg. Ref.</b>	MG8
<b>Site Owner</b>	John Gilmor Gavin
<b>Planning Authority Decision</b>	Place on Register
<b>Date of Site Visit</b>	18 April 2019
<b>Inspector</b>	Una Crosse

## **1.0 Introduction**

- 1.1. This appeal refers to a section 7(3) notice issued by Westmeath County Council on 20<sup>th</sup> December 2018, stating their intention to enter a site at Harbour Street, Link Road, Mullingar, Co Westmeath on to the Vacant Sites Register (VSR) under Reference MG8, 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 5(2) of the URH Act 2015 as amended.
- 1.2. The Section 7(1) Notice was issued to John Gilmor Gavin. The site is unregistered.
- 1.3. There is a concurrent appeal (ABP-303379-19) on lands also in the appellant's ownership to the northwest of the subject site which were entered on the Register under Ref. MG7.

## **2.0 Site Location and Description**

- 2.1. The site, which has a stated area of 1.19 hectares, comprises an irregularly shaped area of land which was previously part of a larger holding and which has been dissected from the remainder of the holding by a new road called the Harbour Street which adjoins the site to the south and southeast. To the northwest there is a newly developed commercial building which is a primary care centre. There are existing residential dwellings to the south/southwest of the site and a playing pitch to the north of the site accessed from a roadway to the east of 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 PA 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. The Notice is dated 20<sup>th</sup> December 2018 and is accompanied by a map outlining the extent of the site to which the Notice relates.

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**

3.2.1. The site is zoned General Urban District in the Mullingar Local Area Plan 2014-2020 the objective O-LZ11 is to provide residential development and other compatible community, healthcare, offices and associated uses. The Plan does not appear to have been varied to provide for the Urban Regeneration and Housing Act 2015 as amended.

## 4.0 **Planning History**

4.1. No planning history on the lands. The site is part of a former overall holding which was subject to a Compulsory Purchase Order 2019 (No. 3) noted as Harbour Road, Mullingar- Link Road to Robinstown the construction of which is completed.

## 5.0 **Planning Authority Decision**

### 5.1. **Planning Authority Reports**

Following a request from the Board, the documentation relating to the process prior to issuing of the Section 7(3) Notice was provided by WCC and is summarised as follows:

- A Planning Report (Informing Section 7(1) Process) which is unsigned and not dated was prepared for the site. I note this report was requested by the Board following the receipt of the documentation originally requested. Notwithstanding, the report notes that a site inspection was carried out on 13th June 2017 and states yes in response to the question, was the majority of site vacant or idle for the last 12 months. It also responds yes to residential land and no to regeneration land.
- In response to housing need they respond yes wherein it is stated that the lands form part of the Robinstown Framework Plan one of three Framework Plans in the Mullingar LAP which will accommodate the majority of future residential development within the town. Analytical data research was carried out with figures extrapolated from Census 2016, geo-directory, daft.ie and other sections of WCC including Housing Section. Also noted that additional pressures for housing supply prevails with Mullingar's designation as the County Town and its location within the commuter belt of Dublin and accessibility by both motorway and rail direct to Dublin City.
- In respect of whether house prices it is stated that house prices are increasing with average purchasing costs for a S-D dwelling up to €280,000 in 2017 (also noting SD on lower bracket of €120,000), detached properties ranging from €215-€550k as referenced in the analytical data paper for Co. Westmeath. It is stated that the cost of renting is also increasing. A note is added stating that on the date of the analytical surveying (6<sup>th</sup> October 2017) that there were 10 properties in total available for rent in Mullingar with a range of unit types outlined with rental costs ranging between €680-900.
- The report notes that the proposal is in compliance with the housing strategy and that the number of habitable houses available for purchase or rent was less than 5% of the total number of houses in Mullingar. The report again references 10 properties available to rent in Mullingar on 6<sup>th</sup> October 2017 and 85 available for sale noting Mullingar has a population of c.20,000 persons. In relation to the number of households qualified for social housing, it is stated that in February 2017, 808 households stated their preference for Mullingar on WCC waiting list with WCC required under Rebuilding Irelands programme and Department target to provide 800 social housing units between 2018-2021.

- It is stated that the site is zoned general urban district with the objective outlined. CPO process outlined. The provisions of Section 5(1)(a) as amended is outlined.
- It is concluded that the site is a greenfield site located within the core of Mullingar town. They state that the site meets the assessment criteria for entry on the VSR given that they are strategically located within the core area of Mullingar and are suitably zoned and served and have been vacant or idle for in excess of 12 months. It is recommended that a Section 7(1) Notice is issued. A section 7(1) notice was issued on 31<sup>st</sup> October 2018 to Mary Francis Gilmore Gavin.
- Following receipt of information from the appellant regarding the ownership of the site, a second Section 7(1) Notice was issued to John Gilmor Gavin dated 30 November 2018. While some correspondence from WCC (22 February 2019) indicates that no response was received, a letter from John Gilmor Gavin dated 12 December 2018 and received by Westmeath County Council on 19 December 2018 and is on file and states that the appellants mother died in 2014 and the property was vested in the appellant. It is stated that there is no particular need for housing in the area with no offers made on the lands with the exception of the CPO for the road which is now completed and provides access to the lands with plenty of surplus lands and lands zoned general urban. Verbal enquiry for the lands in MG7 made which might be sold depending on a number of factors and therefore not a vacant site. Remaining lands at MG8 will be subject of a planning application in 2019 and not within definition of the Act.
- A second report, entitled Vacant Site Assessment Report which is not dated outlines much of the same information in the first report, adding the information regarding the current planning application and noting that a portion of the site is zoned residential. It references an inspection date of October 2018 without referring to any particular date within this month. In relation to housing need it is stated that in 2018 that commencement notices for c.50 houses were received in Mullingar. In 2018 a housing need assessment by WCC states that there was a net housing need of 1,768 on County Westmeath's housing list with 673 required for Mullingar with information outlined in Report 1 included. Reference is made to the re-issuing of the Section 7(1) Notice and the submission received is summarised. The recommendation is that a Section 7(3) Notice is issued with the site registered on 20<sup>th</sup> December 2018.

## 5.2. Planning Authority Notice

- 5.2.1. The Planning Authority decided under section 7(3) to issue a notice on 20th December 2018 referencing sections 5(1)(a) and 6(4) of the Act as amended 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 John Gilmor Gavin in relation both MG7 & MG8 which is summarised as follows:

- Definition of vacant site in Section 5(1)(a) is that site is situated in an area where there is a need for housing and no particular need for housing in this area proven by fact that no offers for either piece of land or any part there of over last 25 years expect for the CPO undertaken by WCC for the road which has divided the lands and plenty of surplus land in the area for housing development;
- Lands are zoned general urban which may include commercial property and not solely residential property subject to permission being granted;
- Lands previously part of one holding and were let for grazing to a local farmer but the lands were severed following the CPO and grazing was discontinued due to issues of water availability because of the new road.
- Lands inherited by appellant in 2014 and not a property developer hoarding the lands and incorrect to include the lands on the Register.
- Publication of market value of the site by WCC in breach of GDPR because information is private and should not be made publically available and instances of lands in private ownership being included on a Register by other Local Authorities without values being included.
- Publication of market value prejudicial to appellant in event that lands are to be sold as in order for open market value to apply in a sales process there should be no prior publication of market value on a public register with published value by WCC potentially either too high or too low and will hold WCC accountable for any loss that may be incurred.

## 6.2. Planning Authority Response

A response received from the Planning Authority was received on 14 February 2019 and is summarised as follows:

- Section 7(1) Notice issued on 31 October 2018 to the identified land owner (Mrs Mary Francis Gilmor Gavin (now deceased) and following communication with Mr. John Gilmor Gavin (landowners son) a subsequent Section 7(1) Notice in respect of said land was re-issued via email on 27<sup>th</sup> November and by post on 30/11 November to Mr. Gilmor Gavin at an address provided.
- No submission was received by WCC in response to same during the statutory consultation stage however due cognisance was afforded to fact that a Section 7(1) Notice was issued with a submission dated 12<sup>th</sup> December 2018 received by WCC on 19<sup>th</sup> December 2019.
- Section 7(3) Notice dated 20<sup>th</sup> December 2018 issued in respect of the lands to Mr. John Gilmor Gavin.
- WCC satisfied that subject lands constitute a 'Vacant Site' within the meaning of the URH Act 2015 as amended.
- Zoning objective attributed to the lands – general urban district – provides for residential development and other compatible community, healthcare, offices and associated uses.
- Having regard to location of the lands within the town of Mulingar and available connection to the public water supply if required.
- Publication of market value of lands contained on VSR contained on the VSR is in compliance with legislative requirements as set out in Section 12 of the Act.

## 6.3. Appellant Response to PA Appeal Response

A response was received from the appellant (dated 1 March 2019) in response to the response of the Planning Authority to the Appeal (summarised above) and is summarised as follows:

- Useful to see how WCC reached their decision on why lands fall within VSR appearing to indicate that they 'gave cognisance' to some delay in appellant response to the Section 7(1) notice which was not the case.

- When contacted, WCC agreed to the reissuing of the Section 7(1) Notice in appellants name rather than name of appellants deceased mother with a deadline date of 19<sup>th</sup> December which was complied with but Section 7(3) Notice was issued very next day on 20<sup>th</sup> December 2018.
- While demand for housing in Mullingar from figures produced by WCC, obviously a lack of developers willing to engage in residential development with no approach made to buy subject lands for residential development and should not be forced to sell the lands for residential development if there is a better opportunity for alternative development subject to planning approval.
- WCC have not addressed publication of market value in their reply and totally prejudicial to the vendor for an open market process to apply;
- URH Act (which will be complied with if required) is not well thought out and rather than imposing an additional tax at 7% the Act should have provided an incentive to encourage the owner to sell land for residential development as this would yield a better result.
- Levy rate changing from 3% to 7% with 7% commencing on 1 January 2020 and not been afforded the benefit of the lower 3% rate and view that WCC raced through the process to ensure that the sites were on the Register by 1 January 2019 without giving due consideration to submission.
- WCC should not have issued the original notice to appellant's mother when they dealt with appellant on the CPO after her death.

## 7.0 Assessment

### 7.1. Process

- 7.1.1. Prior to addressing the criteria outlined in Section 5(1)(a) there are a number of matters related to the process which require some consideration.

#### Issuing of Notice

- 7.1.2. The initial Section 7(1) Notice was issued to Mrs Mary Francis Gilmore Gavin. Following receipt of the Notice, the appellant, John Gilmor Gavin, informed WCC that the intended recipient of the Notice was deceased and that he was the relevant



owner. Following receipt of same, WCC issued a new Section 7(1) Notice to John Gilmor Gavin which is dated 30<sup>th</sup> November 2018 and which provides that the appellant can make a written submission within 28 days after the date of the Notice. I would note that while some of the correspondence from WCC states that no submission was received by WCC, in response to same during the statutory consultation stage, however due cognisance was afforded to fact that a Section 7(1) Notice was issued with a submission dated 12<sup>th</sup> December 2018 received by WCC on 19<sup>th</sup> December 2019. This appears slightly confused. Also as the appellant points out is it not clear what 'due cognisance' actually means. The second report prepared by the PA references the submission received and summarises same but does not provide any analysis of the grounds made. Instead it places the site on the Register the date following the receipt of the submission. While it is not clear what regard if any was had to the appellants submission to the Section 7(1) Notice I would note that the Act does not preclude the PA from entering the site on the Register in the absence of same.

### **Market Value**

- 7.1.3. The appellant raises concerns at the inclusion of the market valuation for the site on the Register which is subject to public perusal and which could impact any future sale price. The Board have no role in the consideration of the market valuation the appeal of which is made to the Valuation Tribunal rather than An Bord Pleanala. Provision for the inclusion of the market valuation on the Register is set out in Statute as outlined by WCC and in this regard the Board has no role in relation to the matter.

### **Zoning**

- 7.1.4. The appellants state that the lands are zoned general urban which may include commercial property and are not solely zoned for residential development. As outlined above, the site is zoned 'General Urban District' in the Mullingar Town Development Plan 2014-2020 the objective of which, O-LZ11, is to provide residential development and other compatible community, healthcare, offices and associated uses. Residential land is defined in Section 3 of the Act as meaning land included by a planning authority in its development plan or local area plan in accordance with section 10(2)(a) of the Act of 2000 with the objective of zoning for

use solely or primarily for residential purposes, and includes any structures on such land. I consider that the zoning objective provides that it would be primarily for residential purposes given the objective specifically states that it is to provide residential development and other compatible uses and in this regard the inclusion of the site under Section 5(1)(a) of the Act is acceptable in principle.

## **7.2. Housing Need**

- 7.2.1. The appellant states that the definition of vacant site in Section 5(1)(a) is that site is situated in an area where there is a need for housing and that no particular need arises for housing in this area proven by fact that no offers for either piece of land or any part thereof over last 25 years except for the CPO undertaken by WCC for the road which has divided the lands and that there is plenty of surplus land in the area for housing development. They also refer to the analysis prepared by WCC in relation to housing need in their response to the appeal response.
- 7.2.2. Housing need is determined by Section 6(4) of the Act which outlines specific criteria as follows:
- (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.
- 7.2.3. I would note that the reports prepared by the PA in relation to the subject site include some detail in respect of the consideration of housing need as required to be determined by Section 6(4) of the Act. However they do not address each of the matters outlined above and use a number of headings which are not included. They refer to a report which informed this information and refer to same as 'analytical data paper for Co. Westmeath which informed the designation of Vacant Sites'. I would

note that the information outlined in the PA reports as determined by Section 6(4) is limited. I will address each in turn.

- 7.2.4. Firstly, part (a) the housing strategy and the core strategy of the planning authority. There is no detailed consideration of the requirements for Mullingar in the Core Strategy with the first report prepared by the PA simply stating yes in response to a question in the report which asks is the development of the site compliant with the housing strategy and core strategy of the County. I do not consider that any reasonable analysis of this matter has been undertaken.
- 7.2.5. In terms of subsection (b) house prices and the cost of renting houses in the area, the first report references house prices increasing and outlines average costs for a SD dwelling which they state is up to €280k in 2017 with other typologies outlined. There is no detail as to the level of increase and whether this is in line with the National average. From a review of Appendix 2 these figures are for Mullingar. The rental prices outlined are for Mullingar. I note that the second report pared refers to housing need in the context of the housing needs assessment report dated 2018 for Westmeath which appears to detail the social housing list.
- 7.2.6. Subsection 9(c) refers to the number of households qualified for social housing support and a figure of 808 for Mullingar in 2017 is outlined. I note that the second report refers to 673 in Mullingar as per the Housing Need Assessment 2018.
- 7.2.7. Subsection (d) of Section 6(4) requests a consideration of 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. This is poorly outlined in the report giving a population figure for Mullingar when the Act specifically requires that the detail is expressed as a percentage of total number of houses 'in the area'. I would note that Appendix 2 attached to the second report does provide a number of tables from a variety of sources regarding housing stock figure for Mullingar with the Census data 2016 indicating of the 4,735 units in Mullingar that 12.25% of same are determined to be vacant. No analysis of this matter has been undertaken nor is there any analysis of the varying figures from the sources identified.
- 7.2.8. I do not consider that the PA have provided sufficient evidence in respect of housing need in their determination to categorically state that there is a housing need in the area as required by the Act.

### 7.3. Suitability for Housing

- 7.3.1. There is no reference in the report to the site being suitable for housing as required by Section 5(1)(a)(ii) as determined by Section 6(5) of the Act. I do not consider that the PA have provided sufficient evidence in respect of suitability for housing in their determination.

### 7.4. Vacant or Idle/Purpose of the Lands

- 7.4.1. 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.

### 7.5. Vacant or Idle

- 7.5.1. The appellants do not claim that the site is not vacant or idle but rather reference their consideration in terms of their housing need. They state that the lands were previously part of one holding and were let for grazing to a local farmer but the lands were severed following the CPO and grazing was discontinued due to issues of access to water because of the new road. It is further stated that the lands were inherited by the appellant in 2014 and that they are not a property developer hoarding the lands and that it was incorrect to include the lands on the Register. I would note that notwithstanding the particular circumstances of the appellant, the spirit of the legislation seeks to activate sites and there is no evidence to suggest that the site was not vacant or idle for the 12 months prior to the placement of the site on the Register.

## 7.6. Purpose of the Lands

7.6.1. 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*.”.

7.6.2. I note that the appellant does not claim that the site is being used for any specific purpose. I do not therefore consider that this section of the Act is relevant to the subject site.

## 8.0 Recommendation

8.1.1. 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 that the site (MG8) at Harbour Street, Link Road, Mullingar, Co. Westmeath 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

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 Board is not satisfied that the Planning Authority have provided sufficient evidence to determine that there is a need for housing in the area or that the site is suitable for housing as required by Section 5(1)(a) subsections (i) and (ii) by

reference to Sections 6(4) and 6(5) of the Urban Regeneration and Housing Act 2015 as amended.

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.

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Una Crosse  
Senior Planning Inspector

May 2019