



An
Bord
Pleanála

Inspector's Report ABP-303381-19

Type of Appeal	Section 9 Appeal against section 7(3) Notice
Location	Folio Ref: 14093, Galway Road, Athlone, Co. Westmeath
Planning Authority	Westmeath County Council
Planning Authority VSL Reg. Ref.	ATH2
Site Owner	John O'Meara
Planning Authority Decision	Place on Register
Date of Site Visit	11 April 2019
Inspector	Una Crosse

1.0 Introduction

- 1.1. This appeal refers to a section 7(3) notice issued by Westmeath County Council on 20th December 2018, stating their intention to enter a site Ref. ATH2 at Galway Road, Athlone, Co Westmeath on to the Vacant Sites Register (VSR) under Reference ATH2, 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 Notice was issued to Patricia O'Meara with the correspondence to the Board undertaken by John O'Meara who states that he is the Executor of the Estate of the late Mrs. Patricia O'Meara. The folio reference is 14093

2.0 Site Location and Description

- 2.1. The site, which has a stated area of 0.94 hectares, comprises an irregularly shaped area of land which has a short area of road frontage onto the Galway Road with the site located to the rear of properties addressing the Galway Road (R446) and the R914 Road to the east. The site also adjoins the rear of properties within St. Joseph's Villas and an area of open space within same. The site falls in level from south to north from the Galway Road. There is a commercial premises adjoining the site to the southwest.

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 20th 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 has two zonings. The majority of the site is zoned for residential development in the Athlone Town Development Plan 2014-2020. An area of the site north of the existing commercial/garage premises is zoned commercial.

3.2.2. Variation No. 2 of the Athlone Town Development Plan 2014-2020 provided for the Vacant Site Levy and was adopted by Westmeath County Council on 28 May 2018. The variation seeks at **O-PM3**: To facilitate in the implementation of the Urban Regeneration and Housing Act 2015, in particular, by way of utilising site activation measures, including the provision of the Vacant Site Levy, as appropriate to assist in bringing forward vacant and/or underutilised 'residential' and 'regeneration' land into beneficial use within lands identified in the Athlone Town Development Plan 2014-2020. For the purposes of clarity, 'residential' and 'regeneration lands' as identified in the Urban Regeneration and Housing Act 2015 are to be interpreted within the Athlone Town Development Plan 2014-2020 as follows:

- **Residential:** Includes all lands zoned 'Proposed Residential', 'Proposed Residential - Low Density', 'Existing Residential' and 'Existing Residential - Low Density', sited within the Development Plan boundary for Athlone (Refer Volume 2, Map Reference ATC15).
- **Regeneration:** Includes all lands zoned 'mixed use', 'commercial', 'enterprise and employment', 'retail warehousing, 'innovation technology' and 'opportunity sites',

within the Development Plan boundary area for Athlone (Refer Volume 2, Map Reference ATC15 and Volume 1, Chapter 5, Section 5.18 for delineation of specific Opportunity Sites).

4.0 Planning History

- 4.1. **Ref. 18/7226** – Further information sought in February 2019 in respect of an application for a residential Development of 15 houses, pedestrian connection link to St. Joseph's Villas, vehicular and pedestrian access from Galway Road and all ancillary site development works and services.

5.0 Planning Authority Decision

5.1. Planning Authority Reports

- 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 26th September 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 residential land and regeneration land.
- In response to whether house prices and cost of renting are sustainable it is stated no and that house prices are increasing with average purchasing costs for a S-D dwelling up to €245,000 in 2017 and 1-bed apartment €149,000 in 2017 with reference to analytical data paper for Co. Westmeath which informed the designation of Vacant Sites – a copy of this report has not been provided by the PA. It is stated that the cost of renting is also increasing with additional pressures for temporary rental accommodation exacerbated by the requirements of students attending Athlone IT. A note is added saying that on the date of the analytical surveying (6th October 2017) that there were 11 properties in total available for rent in Athlone with 1 SD property for rent for €1200 per month.
- 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 Athlone. The report again references 11 properties available to rent in Athlone on 6th October 2017 and 95 available for sale noting Athlone has a population in excess of 21,000 persons. In relation to number of households qualified for social housing, it is stated that in February 2017, 778 households state their preference for Athlone 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 residential with a portion commercial. The planning history of the site is outlined which includes a permission which has expired for 2 houses and an application which was refused. The provisions of Section 5(1)(a) as amended is outlined.
- It is concluded that WCC considers that the site meets the assessment criteria for entry on the VSR at this time as it is sited within an area where there is a demand for housing, has remained undeveloped (vacant and Idle) and unmaintained, does not include a persons home and impacts negatively on the aesthetics of the area and it is recommended that a Section 7(1) Notice is issued. A section 7(1) notice was issued on 31st October 2018 to Patricia O'Meara. No response was received.
- 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 the 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 the assessment it references yes in terms of regeneration land and states that the eastern portion is zoned residential and that this portion of the overall site designated ATH2 forms part of an overall landholding which includes lands immediately adjoining these lands to the south and on which O'Meara's garage is currently in operation. It is noted that there was no response to the Section 7(1) Notice issued and inclusion on the register is recommended.

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 O'Meara which is summarised as follows:

- Attaches vacant site notice and email response to same to WCC;
- Site currently subject of a planning application – Ref. 18/7226 – denoted as Part A on attached map with remaining part of land – denoted as Part B – is subject of a planned development that WCC is aware of;
- Informed that had to appeal same to the Board and request that the Notice is removed from the Register.
- Appellant is executor of estate of the late Mrs. Patricia O'Meara

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 with no response received from owner;
- Section 7(3) Notice dated 20th December 2018 in relation to the site with Mr. O'Meara emailing the Planning Section of WCC following receipt of same advising he was executor of the estate of the late Patricia O'Meara and that permission sought on part A of the site (Ref. 18/7226) and part B will be subject to an application in 2019.
- Given submission was received outside of the statutory timelines for making a submission, WCC responded advising an appeal should be lodged to the Board.

- Noted that subject landholding identified as ATH2 predominately zoned 'proposed residential' (0.71 hectares) with the eastern potential of the lands zoned commercial (0.22hectares) and request that the area with which the Vacant Site level is applicable is revised to encompass solely the lands zoned 'proposed residential' (i.e. 0.71 ha) within ATH2 of the site as per the attached map.

7.0 Assessment

7.1. Process

- 7.1.1. In their response to the appeal Westmeath County Council state that it is noted that the subject landholding identified as ATH2 is predominately zoned 'proposed residential' (0.71 hectares) with the eastern potential of the lands zoned commercial (0.22hectares). They request that the area within which the Vacant Site Levy is applicable is revised to encompass solely the lands zoned 'proposed residential' (i.e. 0.71 ha) within ATH2 of the site as per the attached map.
- 7.1.2. I would note that Variation No. 2 of the Athlone Town Development Plan 2014-2020 provided for the Vacant Site Levy and was adopted by Westmeath County Council on 28 May 2018. It states that for the purposes of clarity, 'residential' and 'regeneration lands' as identified in the Urban Regeneration and Housing Act 2015 to be interpreted within the Athlone Town Development Plan 2014-2020 as follows:
Residential: Includes all lands zoned 'Proposed Residential', 'Proposed Residential - Low Density', 'Existing Residential' and 'Existing Residential - Low Density', sited within the Development Plan boundary for Athlone and Regeneration: Includes all lands zoned 'mixed use', 'commercial', 'enterprise and employment', 'retail warehousing, 'innovation technology' and 'opportunity sites', within the Development Plan boundary area for Athlone.
- 7.1.3. Therefore the PA have identified that they have made an error by including commercial lands within this site boundary which is placed on the Register on the basis of Section 5(1)(a) which relates to residential. They have as outlined above requested that the Board revise the site such that the applicable area for the vacant

site levy encompass solely the lands zoned 'proposed residential' which they state comprises an area of 0.71 ha with the commercial area stated to be 0.22 hectares.

- 7.1.4. The Board have no role in revising the boundaries of sites to which the Section 7(3) Notice applies. The role of the Board is either to confirm or cancel the Notice and given that the PA itself has identified this error I consider that there is no option for the Board other than to cancel the subject Notice. The PA themselves could then recommence the process on the basis of the correct site zoned for residential, subject to any other considerations which the Board may include in their determination.

7.2. Housing Need & Suitability

- 7.2.1. 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. 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' however this paper was not submitted to the Board. I would note that the information outlined in the first PA report as determined by Section 6(4) is very poor. In terms of house prices, it is not stated if the prices quoted are for Athlone or Westmeath in general. There is no detailed consideration of the requirements for Athlone in the Core Strategy. Part (iv) of Section 6(4) is poorly outlined giving a population figure for Athlone is provided when the Act specifically refers to the number of houses 'in the area'.
- 7.2.2. Furthermore, 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. Given the procedural issues outlined above, I consider that the Board may wish to include the matter of insufficient evidence in respect of housing need and suitability in their determination.

7.3. Vacant or Idle/Purpose of the Lands

- 7.3.1. 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.

7.4. Vacant or Idle

- 7.4.1. The appellants do not claim that the site is not vacant or idle but rather reference their intention to develop the lands. The spirit of the legislation seeks to activate sites and I would not that while permission is required to facilitate same, seeking or securing permission is not sufficient to negate the application of the levy and therefore it cannot be determined that the site is not vacant or idle. However, given the procedural matter arising this matter is a secondary consideration at this particular time.

7.5. Purpose of the Lands

- 7.5.1. 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.*”.
- 7.5.2. I note that the appellant does not claim that the site is being used for any specific purpose but rather references the intention to commence development on the basis

of the permission/s proposals sought on his lands. 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 (ATH2) at Galway Road, Athlone, 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,

(d) the inclusion of lands within the site which are not zoned for residential use, and

(e) 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.

Una Crosse
Senior Planning Inspector

April 2019