



An
Bord
Pleanála

Inspector's Report ABP-303441-19

Type of Appeal	Section 9 Appeal against section 7(3) Notice.
Location	Arcadia, Clonbrusk, Athlone, County Westmeath.
Planning Authority	Westmeath County Council.
Planning Authority VSL Reg. Ref.	ATH3.
Site Owner	Tom Donahoe.
Planning Authority Decision	Place on Register.
Date of Site Visit	2 August 2019.
Inspector	Stephen Rhys Thomas.

1.0 Introduction

- 1.1. This appeal refers to a section 7(3) notice issued by Westmeath County Council, stating their intention to enter Lands at Arcadia, Clonbrusk, Athlone, County Westmeath, on to the Vacant Sites Register (VSR) in accordance with the provisions of section 6(2) of the Urban Regeneration and Housing (URH) 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.

2.0 Site Location and Description

- 2.1. The subject site is located on the northern side of the Coosan Road and to the south of the N6 which provides a by-pass to Athlone. It is in the north western suburbs of Athlone and approximately 1 km from the town centre. The land is generally undulating and is below road level on its northern and southern boundaries. The site has been cleared of all previous buildings although some rubble remains and the construction of dwelling houses is currently underway.
- 2.2. To the west of the appeal site is a retail and office park which is now occupied by B & Q., Carpet Right and World of Leather, all trading. A two-storey office building is sited opposite the appeal site across Coosan Road. Access to this area is provided both from Coosan Road to the south and a link road to the east which passes underneath the N6 by-pass road.

3.0 Statutory Context

3.1. Urban Regeneration and Housing Act 2015 (as amended)

- 3.1.1. The Notice issued under Section 7(3) of the Act states that the planning authority is of the opinion that the site referenced is a vacant site within the meaning of Section 5(1)(a) and 5(2) of the Act. The Notice is dated 20 December 2018 and is accompanied by a map outlining the extent of the site to which the Notice relates.

3.2. Development Plan Policy

- 3.2.1. **Athlone Town Local Area Plan 2014-2020** - The site comprises 5 parcels of land in the one ownership. Land parcels 21693F, 12853F, 10641, 20269F and 17143F are

located on lands zoned Proposed Residential – ‘To provide for residential development, associated services and to protect and improve residential amenity’.

3.2.2. The Athlone Town Local Area Plan 2014-2020 was amended by Variation 2 to incorporate the provisions of the Urban Regeneration & Housing Act 2015 regarding the Vacant Site Levy and urban renewal and regeneration into the plan. Of most relevance is Objective 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 to be interpreted within the Athlone Town Development Plan 2014-2020 as follows:

3.2.3. 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.

4.0 Planning History

4.1. Subject site:

PL34 .232756 - 86 no. dwellings with creche, car parking and associated works. Granted September 2009, extended until September 2019 and revised by conditions.

PL34 .217465 – Permission refused for the demolition of existing buildings and construction of 204 no. residential units, internal roads, access, car parking, boundary walls and all associated site works. October 2006.

PL34 .210614 – Permission refused for 60 dwellings. June 2005.

5.0 Planning Authority Decision

5.1. Planning Authority Reports

- **Vacant Site Assessment Report ATH3** (first report), as is usual with other appeals in Westmeath’s jurisdiction, such a report would outline the date of the visit

to the site, the site area, zoning and the type of site for the purposes of the Act. The report is usually accompanied by colour photographs, a map and the analytical research conducted in relation to the establishment of the VSR in Westmeath. This is not the case and the initial report is not on the file.

- A **Vacant Site Assessment Report** (second report), outlines a site visit having taken place in October 2018, description of the site, residential zoning and notes that the site is not in use for agriculture and a detailed assessment of housing need. In response to the landowner's submission, the planning authority note that no construction activity has taken place and the lands are vacant. A section 7(3) Notice was recommended.

5.2. **Planning Authority Notice**

Planning Authority decided under section 7(3) to issue a notice on 20 December 2018 referencing sections 5(1)(a) 5(2) 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**

- 6.1.1. The landowner has submitted an appeal to the Board, against the decision of Westmeath County Council to place the subject site on the Register. The grounds of the appeal can be summarised as follows:

- The appellant states that they intend to implement the permission for residential development on the site soon, and a commencement notice will be lodged in early 2019.

The grounds of appeal include the section 7(3) Notice and the initial submission made by the landowner to the planning authority.

6.2. **Planning Authority Response**

A response received from the Planning Authority to the grounds of appeal are summarised as follows:

- The planning authority reiterate their initial assessment of the site in the context of the 2015 Act and note that the site is currently for sale.

A copy of a Commencement Notice for 6 units is enclosed.

6.3. Further Submissions

A commencement notice for six units out of 76 units with the reference number 8428470, has been submitted by both the planning authority and the appellant.

7.0 **Assessment**

7.1. **Introduction**

- 7.1.1. An appeal under section 9 of the Act, requires that the burden of showing that the site or a majority of the site was not vacant or idle for the 12 months preceding the date of entry on the Register is on the owner of the site. Section 9(3) of the Act states that the Board shall determine whether the site was vacant or idle for the duration of the 12 months concerned or was no longer a vacant site on the date on which the site was entered on the register. The subject site was entered onto the Westmeath County Council VSR on the 20 December 2018.
- 7.1.2. The Section 7(1) Notice was issued under the provisions of Section 5(1) of the Act, to which the owner responded by submission. The Section 7(3) Notice was issued under the provisions of Section 5(1)(a) of the Act which relates to residential lands. The assessment undertaken by the Planning Authority to inform the placing of the site on the Register, which I outline in section 5.1 above, refers to the tests included for residential lands under section 5(1)(a) and by reference to Section 6(4) and 6(5) of the Act as is required for lands zoned for residential purposes. The lands are zoned for residential purposes. The site is considered residential lands for the purposes of the 2015 Act.

7.2. **Vacant or Idle - Documentation Omission**

- 7.2.1. As I have indicated at section 5.1 of my report, the initial site assessment report prepared by the planning authority that I would expect to find on file has been omitted. The Board may wish to request the initial report as it should confirm when the initial site visit took place. Even though the planning authority in their second report state that the site had been vacant for the previous 12 months, without knowing the initial site inspection date I cannot determine with absolute certainty that the relevant time period of 12 months had elapsed.
- 7.2.2. The grounds of appeal lodged by the owner do not address any of the criteria set down by section 5(1)(a) of the 2015 Act. The owner has not advanced a use for the site, has not questioned the suitability of the site for housing or whether there is a housing need in the area. The sole objection from the owner is that works on

constructing the permitted houses will start soon and a commencement notice has been applied for.

- 7.2.3. The Council's second or response to the owner's submission report states that a site visit was undertaken in October 2018 and the site was found to be vacant/idle. Colour photographs detail the condition of the site as viewed from the roadside. The Planner's report goes on to state that the site accords with section 5(1)(a) of the Urban and Regeneration and Housing Act 2015. In addition, the report addresses the need for housing in the context of Section 6(4) of the 2015 Act and the suitability of the site for the provision of housing in the context of Section 6(5) of the 2015 Act.
- 7.2.4. The appellant states that planning permission exists for the site, a commencement notice has been submitted and confirms that 6 of the 76 houses are to start on the 5 June 2019, BCMS reference number 8428470.
- 7.2.5. The site has a previous planning permission and works are underway to implement the permitted development of 76 houses. I note that the planning authority state that the site was vacant or idle for the 12 months previous to the entry on the register and was vacant or idle on the date of their site visit – October 2018. On the day of my site visit I observed that significant construction activity had commenced on site and that works were ongoing. The Urban Regeneration and Housing Act 2015 under section 9(3) states the following:

Where the Board determines that a site was not vacant or idle for the duration of the 12 months concerned or was no longer a vacant site on the date on which the site was entered on the register in accordance with section 6 (2) it shall give written notice to the planning authority who shall cancel the entry on the register in respect of that site.

- 7.2.6. From the evidence submitted by the planning authority and statements made by the appellant that construction works would start as soon as possible, it is quite likely that the site was vacant or idle for the relevant period of 12 months and was certainly a vacant site when entered on the register (20 December 2018). However, in my mind the site can no longer be classified as vacant or idle because significant construction works are currently underway to implement a planning permission. This is confirmed by a commencement notice to begin the construction of 6 houses in June 2019. The lands are clearly going to provide the use for which they were

zoned. The 2015 Act however, provides no mechanism for the Board to consider full and beneficial use of a site after entry on the register, including such uses as construction on foot of a planning permission.

7.2.7. The site could have been considered vacant or idle for the relevant period concerned, despite this being no longer the case on the date of my site visit, 2 August 2019. I note that the planning authority observed no construction works in October 2018. In addition, the applicant has not submitted firm evidence to convince me that the majority of the site was in full and beneficial use prior to the entry of the site on to the register.

7.2.8. The Board may wish to note that under section 10 of the 2015 Act, the obligation to notify the planning authority of any changes in the status of the site is on the owner, as follows:

(1) The owner of a vacant site that stands entered on the register under section 6 (2) shall notify the planning authority in whose functional area the site is located if it is no longer vacant or idle.

(2) If, at any time, a planning authority is satisfied that a site that stands entered on the register under section 6 (2) is no longer a vacant site it shall cancel the entry on the register in respect of that site.

Consequently, it is in the owner's power to provide suitable evidence to satisfy the planning authority that the site is no longer vacant or idle and cancel the entry of the site on the register.

7.2.9. The omission of the planning authority's initial assessment report is not a trivial matter, it would contain the date of the initial site visit and therefore confirm without doubt that the site was vacant for the relevant period. On the other hand, the appellant has not put forward any use for the site over the relevant period. My observations of the site would agree with the planning authority's conclusion that the site has been vacant for some time. However, I am not entirely satisfied that the site was vacant or idle, because I cannot be certain that this was the state of affairs for the relevant time period. The site cannot therefore have been a vacant site in full accordance with section 6(2) of the 2015 Act.

7.3. **Housing need and suitability**

- 7.3.1. The appellant has not appealed the need for housing in the area or if the site is suitable for housing. I am satisfied that the information presented by the planning authority in relation to sections 6(4) and 6(5) of the 2015 Act is evidence based and a fair assessment of the need for and suitability of the site for housing. I am also mindful of the planning status of the site; it is zoned for residential uses, there is an extant permission for housing on the site and construction activity has already started.
- 7.3.2. I am satisfied that the site meets the criteria for inclusion on the register as referenced by section 6(4) and 6(5) of the 2015 Act and consequently fulfils the requirements of 5(1)(a)(i) and (ii) for land upon which residential uses are permitted.
- 7.4. The placement of a site on the register requires three criteria to be fulfilled under section 5(1)(a)(i), (ii) and (iii) of the 2015 Act. However, as outlined above, I am not entirely satisfied that the site has been entered on the register in an appropriate manner. It is not completely evident from the documentation on the file that the relevant time period prior to the placement of the site on the register had been allowed to elapse. An issue that can be easily rectified if the initial site assessment report can be submitted or should the planning authority wish to pursue the matter and begin the process of registration again. It is this documentation error that in my mind requires the site to be removed from the register.

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 Notice stating that the site at Arcadia, Clonbrusk, Athlone, County Westmeath was a vacant site for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 20 December 2018 shall be removed.

9.0 Reasons and Considerations

Having regard to

- (a) The information placed before the Board by the Planning Authority in relation to the entry of the site on the Vacant Sites Register,

- (b) The grounds of appeal submitted by the appellant,
 - (c) The report of the Planning Inspector,
 - (d) The site could not have been a vacant site within the meaning of section 5(1)(a) of the Urban Regeneration and Housing Act 2015 as amended, for the reason that the planning authority's assessment of the site did not account for the duration of the 12 months preceding the date of entry on the register in accordance with section 6(2) of the 2015 Act,
- the Board is not satisfied that the site was a vacant site for the relevant period.

Stephen Rhys Thomas
Senior Planning Inspector

7 October 2019