



An  
Bord  
Pleanála

## Inspector's Report ABP-303539-19

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**Type of Appeal**

Section 9 Appeal against section 7(3)  
Notice.

**Location**

Lands at WH9744, WH16229F,  
WH8063F, WH22106F, WH10494F,  
WH8382F and WH10493F,  
Loughanaskin, Athlone, County  
Westmeath.

**Planning Authority**

Westmeath County Council.

**Planning Authority VSL Reg. Ref.**

ATH9.

**Site Owner**

Westmeath County Council.

**Planning Authority Decision**

Place on Register.

**Date of Site Visit**

13 September 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 WH9744, WH16229F, WH8063F, WH22106F, WH10494F, WH8382F and WH10493F, Loughanaskin, 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 broadly located in the northern suburbs of Athlone. The subject site is located on lands that are divided between three distinct parcels. The first parcel of land that is currently unregistered is located along Grace Park Road between commercial lands, terraced housing and the playing fields of a national school. This site is level with the public road and slopes gently upwards to the south. The site is much overgrown, with an area of hardstanding to the front and heaps of rubble and boulders throughout. The site is bounded to the road by a low level green wire mesh fence.
- 2.2. The second of the smaller sites with a folio reference of WH16229F comprises a commercial warehouse building and its attendant grounds. This site is also located along Grace Park Road. A private laneway skirts the southern boundary of the site and access can be gained from the commercial yards of adjacent businesses to the north. County Council vehicles, plant and other equipment are parked/stored on site at present.
- 2.3. The last of the three sites is large and comprises a number of folio reference numbers (WH9744, WH8063F, WH22106F, WH10494F, WH8382F and WH10493F). The site has frontage onto Grace Park Road and Lower Road, the boundaries to these roads are formed by a low block wall that retains the ground behind. The entire site is comprised of grassland that is well maintained and access is easily gained over the low retaining wall. On the day of the site visit, the site was being mowed by a tractor. The remaining boundaries of the site back onto a railway line and housing.

### 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 3 parcels of land in the one ownership, Westmeath County Council. All parcels of land are located on lands zoned Mixed Use - To provide for, protect and strengthen the vitality and viability of town centres, through consolidating development, encouraging a mix of uses and maximising the use of land, to ensure the efficient use of infrastructure and services. Residential development is permitted in principle in this land use zoning.
- 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. All 'mixed use' zoned lands within the Development Plan boundary for Athlone town is subject to consideration under the provisions of the Urban Regeneration and Housing Act 2015 with respect to the application of the Vacant Site Levy for 'residential' purposes.

## 4.0 Planning History

### 4.1. Subject site:

County Council development on the lands included the demolition of 31 houses and construction of 3 houses during 2008 and 2013.

## 5.0 Planning Authority Decision

### 5.1. Planning Authority Reports

- A **Vacant Site Assessment Report** (first report) outlining the date of the visit to the site (26 September 2017), the site area greater than 0.05 Hectares, mixed use zoning and the type of site for the purposes of the Act which in this case is residential, the regeneration box is also checked on the Council's assessment sheet. The site is recommended for inclusion of the register and a section 7(1) Notice should issue.

The report is accompanied by a map and the analytical research conducted in relation to the establishment of the VSR in Westmeath, that states house prices and rents have increased, the number of available houses for sale or rent is less than 5% and 778 households qualified for social housing state a preference for Athlone. The site is serviced and ready for development and nothing affects the physical condition of the site.

- A **Vacant Site Assessment Report** (second report), reiterates the initial report and states that no submission from the landowner was made on foot of the section 7(1) Notice. In this report the section that concerns whether a site was regeneration land, is answered no. Another site inspection was made in October 2018. The land bank site remains undeveloped after demolition of buildings, the larger site is seeded and maintains as open space and the maintenance depot has ceased operations. 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 lands in question, are not vacant or idle. A machinery depot operated up to August 2018 on a stated area of 0.47 Hectares and continues to be used as a storage yard (WH16229F).
- 9 houses were demolished on lands adjacent to the storage depot area, the lands were reinstated and are currently used as passive public open space. (0.91 Hectares).
- Lands associated with Folio WH9744 have been in the ownership of the Council since 1935.
- The lands should not be considered for just residential purposes. The lands are zoned mixed use and the notice should have referred to regeneration lands not residential lands.
- As regeneration lands for the purposes of the 2015 Act, none of the criteria are met, the lands are not ruinous or neglected, no antisocial behaviour and there has not been a reduction of the number of people living in the area.
- The lands cannot be developed until a masterplan is agreed. Furthermore, funding under the Urban Regeneration Development Fund (URDF) cannot be sought until a masterplan is approved.
- A framework plan for Loughanaskin will be prepared and plan led development of the area will then follow.

The grounds of appeal include the correspondence that accompanied the section 7(3) Notice, the notice itself and a map to identify land and a table showing URDF funding allocations.

**6.2. Planning Authority Response**

None.

**6.3. Further Submissions**

None.

## 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 was not a vacant site 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 a vacant site 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 Notice has been 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.
- 7.1.3. The main concern of the appellant is that the planning authority have not properly served the section 7(3) Notice because it referred to section 5(1)(a) residential lands. The appellant contends that the lands are mixed use zoned, not suitable for solely residential purposes and so the notice is defective. The appellant also states that the site is not vacant, but in use as a storage yard for Council operations and the bulk of the remainder of lands are used for passive open space and maintained as such.

### 7.2. Vacant/Idle

- 7.2.1. The appellant contends that two of the sites are in use, one as passive open space the other as a machinery depot. No use is advanced for the third and smallest site, currently unregistered. The planning authority note that the largest of the three sites has been re-seeded and is maintained, the second site was in use for council vehicles but this is no longer the case.
- 7.2.2. My impression of the three sites on the day of my site visit is as follows: the largest site (folio reference WH9744, WH8063F, WH22106F, WH10494F, WH8382F and WH10493F) is an expansive area of open space currently in grass and well

maintained. The second site (folio reference WH16229F) comprises a large yard and warehouse type building, the yard area accommodated Council plant and equipment and a Council road sweeper vehicle entered the yard during my site visit. The last of the three sites (unregistered lands) is unused for any purpose, there are piles of rubble/rock and the site is overgrown.

7.2.3. Taking each site in turn, the largest site, according to the owner and the planning authority is in use as passive open space and maintained as such, I agree. However, this may not have always been the case, the owner has stated that houses were demolished and the lands reinstated for use in the short term as passive open space. The appellant has also indicated that they have been the owners of a portion of these lands (WH9744) since 1935, the area of this parcel amounts to 0.32 Hectares, no account for the balance of the lands in this parcel is given. The amended URH Act 2015 states the following with regard to section 5(1)(a):

*(iii) 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.*

7.2.4. The owner's contention that a part of this larger site (portion WH9744) has been in their possession since 1935, points to another use or purpose before the lands were zoned residential. This is not the case for the entire site where no reference to prior ownership is given concerning folio reference numbers WH8063F, WH22106F, WH10494F, WH8382F and WH10493F. Even though the appellant may have been the owner of folio reference number WH9744 since 1935, this relates only to a minor portion of the site. I am of the view that though the larger site is and has been well maintained in the recent past as passive open space. However, this is a new use most certainly after the lands were zoned for residential purposes and in any case the length of ownership has not been clarified. The former use having been for housing, now demolished. Even if the 0.32 Hectares of land with the reference



number WH9744 owned by the appellant prior to the lands being zoned residential were taken into account, it would only amount to a minor portion of the entire vacant site.

- 7.2.5. The second site with the folio reference WH16229F (0.47 Hectares), is a warehouse and its attendant yard. The appellant makes the case that it has been and continues to be used as a machinery depot for Council vehicles and plant equipment. The planning authority dispute the use of the site as a maintenance depot and see the site as underutilised by such a use. In my view the site has and is in use as a Council maintenance depot or storage yard. The depot site amounts to 0.47 Hectares, the overall site area of ATH9 is stated at 2.07 Hectares. The depot site therefore constitutes a minor portion of the overall site.
- 7.2.6. The last individual site that makes up Vacant Site ATH9, has no discernible use at present. No use is advanced for the site by the owner and the planning authority simply state that the lands have been cleared. It is evident from my site visit that the site has been vacant or idle for some time and would constitute a vacant site.
- 7.2.7. As I already mentioned the Vacant Site reference number ATH9 comprises three separate and distinctly different land parcels that add up to 2.07 Hectares. The unregistered site is a vacant site and no opposition to this is raised by the appellant, 0.37 Hectares. The largest part of the largest site at 0.91 Hectares is in use for passive open space, but not before it was zoned residential. The appellant has not demonstrated the length time this larger portion of the lands has been in their ownership, it is also a vacant site. The balance of the largest land parcel, owned for some time by the appellant, is in use as open space and amounts to 0.32 Hectares. It is not a vacant site by virtue of having been in the appellant's ownership before it was zoned residential. The remaining site is in use as a Council maintenance depot, at 0.47 Hectares, it is not a vacant site but it is only a minor portion of the overall Vacant Site ATH9. Taken together, I am satisfied that 1.28 Hectares of the overall 2.07 Hectares is vacant and given that this is a majority of the site, the lands are therefore a vacant site for the purposes of the 2015 Act (as amended).
- 7.2.8. Lastly, I note the appellant's comments about the masterplan making process and reference to it as a potential barrier to funding until the Loughanaskin framework plan is in place. This, in their view has paused or prevented the development of the lands.

The 2015 Act does not indicate that administrative activity or other funding or financing measures to do with a site, such as the preparation of a masterplan, obtaining planning permission or securing finance should be considered to deem a site not vacant or idle. Though the owner may be exercising financial due diligence and awaiting the preparation of a plan to lead development, I do not consider that the activities listed by the appellant comprise either site works or a permitted and ongoing use of the lands during the relevant period.

### **7.3. Housing need and suitability**

- 7.3.1. The appellant has not appealed the need for housing in the area but has attacked whether the site is suitable for housing given the 'mixed use' zoning. 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 mixed use of which residential purposes are permitted in principle. I also note variation 2 to the Town Development Plan with regards to the Vacant Site Levy and the additional text that clearly states that mixed use zoned lands shall be considered as 'residential' for the purposes of the 2015 Act.
- 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. Other Matters**

- 7.4.1. The appellant has stated that the section 7(3) notice was defective because it referenced residentially zoned lands. The owner contends that the lands are zoned mixed use and that the development of solely residential purposes would not be suitable for the area. In this regard, I note that the notice was served in the context of residential purposes, the lands are zoned mixed use, in which residential is permitted. As I have outlined above and more to the point, the Athlone Town Local Area Plan 2014-2020 was amended by Variation 2, and states that all 'mixed use' zoned lands are subject to the provisions of the 2015 Act with respect to the application of the Vacant Site Levy for 'residential' purposes. I am satisfied that the planning authority correctly assessed the lands with regard to the criteria outlined by

the Act for residential lands and so the issues raised by the appellant with relation to regeneration sites are not relevant in this instance.

- 7.5. 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. In this instance, the majority of the site is vacant or idle and all the criteria that refer to section 5(1)(a)(i) and (ii) as expanded upon by sections 6(4) and 6(4) of the 2015 Act have been met, the site is a vacant site.

## **8.0 Recommendation**

- 8.1. I recommend that in accordance with section 9(5) of the Urban Regeneration and Housing Act 2015 (as amended), the Board should confirm the Notice stating that the Lands at WH9744, WH16229F, WH8063F, WH22106F, WH10494F, WH8382F and WH10493F, Loughanaskin, Athlone, County Westmeath were a vacant site for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 20 December 2018 shall be deemed to take effect from that date.

## **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 majority of the lands are and were a vacant site as demonstrated by the lack of any discernible use for a portion of the overall lands, in addition to a large proportion of the lands that are or were 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 because it has not been shown that the most recent purchase of that portion of the lands occurred before it became residential land, and before, on or after the

commencement of section 63 of the Planning and Development (Amendment) Act 2018,

- (e) The lands are and were in an area in need of housing and where it was and is suitable for the provision of housing as demonstrated by the mixed use zoning that allows for residential development, and that insufficient reason is put forward to cancel entry on the Vacant Sites Register.

the Board is satisfied that the site was a vacant site for the relevant period.

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Stephen Rhys Thomas  
Senior Planning Inspector

14 October 2019