



An
Bord
Pleanála

Inspector's Report ABP-303543-19

Type of Appeal	Section 9 Appeal against section 7(3) Notice.
Location	Site WH3844F, Newbrook Road, Clonmore, Mullingar, Co. Westmeath.
Planning Authority	Westmeath County Council.
Planning Authority VSL Reg. Ref.	MG2.
Site Owner	JMCM Properties Ltd.
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 a site at Newbrook Road, Clonmore, Mullingar, 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 in Mullingar Business Park along the Clonmore/Newbrook Road, south west of Mullingar town centre. The subject lands have been cleared of buildings and a large open yard area remains. The boundaries of the site to the public road are in poor repair and comprise concrete post and chain-link fencing. The large yard area is overgrown and the footings of former buildings are present.

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. The site is zoned objective Commercial - 'To provide for commercial development which does not need to be located in the Town Centre or retail warehousing zone', in the **Mullingar Local Area Plan 2014-2020** and is located within a redevelopment area. The 'Commercial' zoning provides expansion of existing commercial uses and for new uses such as offices, hotel, showrooms. Such uses shall be consistent with the Retail Strategy and shall not detract from the retail function of the town centre. It does not encompass residential uses.

3.2.2. O-DU5 - This LAP has been amended by Amendment No. 2, to incorporate the provisions of the Urban Regeneration & Housing Act 2015 regarding the Vacant Site Levy and urban renewal and regeneration into the Mullingar Town Local Area Plan. With respect to the subject appeal, the adopted amendment under Commercial zoning is relevant:

All 'Commercial' zoned lands within the Mullingar Local Area Plan contained in Volume 2 Book of Maps, are subject to the provisions of the Urban Regeneration and Housing Act 2015 with respect to the Vacant Site Levy for 'regeneration' purposes.

4.0 Planning History

4.1. Subject site:

PA reference 12/5033. Demolition of a number of structures in the site.

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 (13 June 2017), the site area greater than 0.05 Hectares, zoning and the type of site for the purposes of the Act which in this case is Regeneration. It is stated that structures on the site have been removed and that the site has remained in the same neglected condition since planning permission was implemented. The condition of the site affects the character of the area. The site is recommended for inclusion of the register and a section 7(1) Notice should issue.

The report is accompanied by colour photographs, a map and the analytical research conducted in relation to the establishment of the VSR in Westmeath.

- A **Vacant Site Assessment Report** (second report), reiterates the initial report and responds to any submissions made on foot of the section 7(1) Notice, none were received and as the condition of the site remained unchanged 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, as defined by the 2015 Act, are not residential and do not fall under regeneration either. The area is zoned commercial and a masterplan is awaited for the redevelopment area defined in the LAP.
- The section 7(3) notice issued by the Council refers to section 5(1)(a) and 5(2) which relates to residential sites over 0.05 Hectares. However, the site is located on a commercial zoning, that does not allow for residential uses. There are further areas of confusion in terms of the Notice, the accompanying letter refers only to section 5(1) and 5(2), but inserts the text from the 2015 Act that concerns section 5(1)(b)(i) and (ii). The Notice was not issued in the correct form.

The grounds of appeal include the correspondence that accompanied the section 7(3) Notice and the notice itself.

6.2. **Planning Authority Response**

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

- The planning acknowledge that the section 7(3) Notice inaccurately referenced section 5(1)(a) as opposed to section 5(1)(b) of the 2015 act.

6.3. **Further Submissions**

The appellant reiterates the issues raised by the initial grounds of appeal.

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 regeneration under section 5(1)(b) and by reference to Section 6(6) of the Act as is required for lands zoned for regeneration purposes.
- 7.1.3. The main concern of the appellant is that the Council 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 commercially zoned, not suitable for residential purposes and that the landowner was confused by the defective notice. The planning authority acknowledge that the Notice contained errors. In addition, the appellant maintains that the commercially zoned lands in question do not constitute 'regeneration' lands as defined by the 2015 Act.

7.2. Planning Authority Notice

- 7.2.1. I note that the planning authority's section 7(3) notice refers to Section 5(1)(a) of the 2015 Act, that the site is a Vacant Site for the purposes of residentially zoned land. The site is located on lands zoned Commercial - 'To provide for commercial development which does not need to be located in the Town Centre or retail warehousing zone'. The planning authority correctly applied the assessment criteria for regeneration lands as outlined by Section 5(1)(b) and Section 6(6) of the 2015 Act. The planning authority arrived at the conclusion that the site was a vacant site for the reasons specified for regeneration sites. Though the planning authority may have followed the steps outlined in the 2015 Act correctly I am concerned that the

notice is defective. This has consequences for the owner of the site because their ability to prepare an appropriate submission or appeal could have been negatively affected. The Board may wish to remove the site on this point alone, however, I think it is necessary to consider the merits of the appeal such as they are. In that regard, the assessment of the appeal is set out below in the context of lands zoned site for commercial purposes and in the context of regeneration sites and the VSR.

- 7.2.2. There are other perceived procedural issues that have been raised by the appellant and I shall deal with these briefly. With reference to the suitability of the site for inclusion on the register, I note amendment No. 2, to incorporate the provisions of the Urban Regeneration & Housing Act 2015 regarding the Vacant Site Levy and urban renewal and regeneration into the Mullingar Town Local Area Plan. With respect to the subject appeal, the adopted amendment under Commercial zoning is relevant as it is stated that all 'Commercial' zoned lands within the Mullingar Local Area Plan contained in Volume 2 Book of Maps, are subject to the provisions of the Urban Regeneration and Housing Act 2015 with respect to the Vacant Site Levy for 'regeneration' purposes. I am satisfied that the planning authority applied the relevant sections of the 2015 Act to the subject site with the exception of the 7(3) Notice that incorrectly identified the site in the context of section 5(1)(a) residential land.

7.3. **Vacant/Idle**

- 7.3.1. The appellant has not put forward any use for the site over the relevant period. The site boundary is run down and shows signs of disrepair. The site interior and specifically the large area of hardstanding is overgrown and is clearly unused at present and in the recent past. My observations of the site would agree with the planning authority's conclusion that the site has been vacant for some time.

7.4. **Adverse effects amenities/character of the area**

- 7.4.1. The 2015 Act states that a planning authority, or the Board on appeal, shall determine whether or not the site being vacant or idle has adverse effects on existing amenities or reduces the amenity provided by existing public infrastructure and facilities (within the meaning of section 48 of the Act of 2000) in the area in which the site is situated or has adverse effects on the character of the area. Neither the planning authority or the appellant have raised issues in terms of adverse effects on

existing amenities or a reduction in the amenity provided by existing public infrastructure and facilities. I see no reason to address these factors either. The main reason for placing the site on the register is to do with how the site effects the character of the area, in this respect I examine the site as follows.

- 7.4.2. The first matter is that of the '*land or structures in the area were, or are, in a ruinous or neglected condition*'. The wider area of the site is characterised by warehouse and commercial premises set back from the road. The subject site is no different from the form and character of surrounding developments other than the fact that on site buildings have been demolished and removed. In addition, the condition of the large yard area and boundary is clearly unmaintained and neglected.
- 7.4.3. The planning authority's impression of the site concurs with my own and highlights a lack of maintenance and care around the site's external appearance. The planning authority's assessment of the site was carried out during the relevant 12 month period, June 2017 to October 2018. The site may not be ruinous but it has in the past and continues to show signs of neglect and the premises' long term vacancy are the principle reasons why the planning authority placed the site on the register.
- 7.4.4. With regards to antisocial behaviour and section 6(b) of the 2015 Act. The planning authority note no obvious signs of antisocial behaviour taking place on the site, I would agree with this view. The planning authority do however, note that the incidence of vacant properties in the area could be a contributory factor resulting in antisocial behaviour becoming a problem. On the day of my site visit I did not observe any obvious signs that antisocial behaviour was or had taken place. There were limited amounts of litter caught in the boundary fencing, but this is more an issue of general littering rather than the direct influence of the site per se.
- 7.4.5. Lastly, the Act requires an assessment of whether there has been a reduction in the number of habitable houses, or the number of people living, in the area. To this, the planning authority note that the area comprises commercial structures not residential units and so no impacts to a reduction in housing is identified. The appellant notes this fact and I agree section 6(6)(c) of the Act does not apply.
- 7.4.6. The appellant's premises currently shows signs of significant neglect and lack of maintenance. However, the Act is concerned with the past appearance of the premises and for this I must rely on the evidence provided by appellant and planning

authority. In this instance I am convinced by the photographic images presented by the planning authority that show the site with obvious signs of neglect and lack of maintenance. It is for this reason that I find the site accords with section 6(6)(a) of the 2015 Act, because the lack of a rigorous maintenance regime during the relevant period had adverse effects on the character of the area and this matter was affected by the existence of such vacant or idle land. In my view, the site meets the first parameter and given the inclusion of 'or' in the Act there is ultimately no requirement to meet all three. The site could be considered vacant or idle for the purposes of the Act.

- 7.4.7. However, as I have outlined in section 7.2 of my report, there is a significant defect in the section 7(3) Notice. It is this procedural issue that precludes the inclusion of the site on the register, even though the site has been vacant and its neglected appearance impacted on the character of the area.

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 WH3844F, Newbrook Road, Clonmore, Mullingar, Co. 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 discrepancies on the wording within the correspondence, prepared by Westmeath County Council under Section 7(1) and Section 7(3) of the Urban Regeneration and Housing Act 2015 as amended, which includes text from Section 5(1)(b) of the Act, which sets out the meaning of a vacant site

consisting of regeneration land, the designation of the site as regeneration land, in the Vacant Site Assessment Report 2018, prepared by the planning authority, notwithstanding that the site is designated as regeneration land for the purposes of the Vacant Site Levy under the statutory development plan, the Notice of Entry on the Vacant Site Register dated 20th December 2018, refers to Section 5(1)(a) of the Act, which relates to a site consisting of residential land, and that as a consequence, the procedure for entry on to the register with regard to setting out reasons had not been properly applied, the Board is satisfied that the site is not a vacant site.

Stephen Rhys Thomas
Senior Planning Inspector

29 October 2019