



An
Bord
Pleanála

Inspector's Report ABP-303548-19

Type of Appeal	Section 9 Appeal against section 7(3) Notice.
Location	Lands at WH1371F and WH5779F, Newbrook Road, Clonmore, Mullingar, County Westmeath.
Planning Authority	Westmeath County Council.
Planning Authority VSL Reg. Ref.	MG3.
Site Owner	Taconic International 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 Lands at WH1371F and WH5779F, 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 on lands associated with warehouse/factory buildings on Newbrook Road in the southern area of Mullingar. The whole area of Newbrook Road at this location is characterised by industrial and commercial buildings set in large compounds with yards and car parking.
- 2.2. The subject site comprises a number of individual and connected industrial buildings with office and laboratory accommodation. There is an area of car parking to the front and the rear of the site is accessed from a large vehicular entrance with security gates. The site interior has a number of connected yards and hardstanding areas. The interior of the buildings are empty, with no plant or machinery present and the office accommodation has no furniture. The overall appearance of the site from the public road was generally good with well maintained external building finishes and a tidy parking area.

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**. 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:

The planning history of the site includes a number of permissions from the 1980s and concern factory operations on the lands concerned, reference numbers 89/707, 87/490 and 84/480 all refer.

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 exhibit a neglected condition that indicates a

lack of maintenance. 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 the detailed submission from the landowner made on foot of the section 7(1) Notice. The report outlines the planning authority's response that highlights the amendment to the LAP that details 'regeneration' lands for the purposes of the 2015 Act and notes that the lands in question are available for lease and have been vacant since 2012. 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 Urban Regeneration and Housing Act 2015 has been misapplied. The subject site is not zone residential, has not been identified for regeneration and is not in an area normally associated with housing. The area is commercial in nature and characterised by warehouse and factory buildings. The purpose of the Act is to open up lands for housing and to address renewal in areas lying vacant or idle.
- Submissions made on foot of the section 7(1) notice have not been taken into account by the planning authority. The planning authority hastily implemented the VSR without due consideration to the submissions made.

- The section 7(1) Notice was faulty because it did not set out the tests used to determine that the site was a vacant site. The section 7(3) Notice stated that the site had been entered on to the register in accordance with section 5(1)(a) residential lands. The entry on to the register is therefore invalid.
- The site is located on lands with a commercial zoning and is assessed under the requirements for regeneration sites for the purposes of the VSL. The site is not vacant or idle, it is a commercial premises not used at present but ready for occupation. Even if the unit is vacant it is not impacting on public infrastructure and facilities outlined in section 6(6) of the Act, and is not having adverse effects on the local area.
- The appellant sets out the rational why the site is not suitable for housing and why there is not a need for housing at this location, sections 6(4) and 6(5) of the 2015 Act refer.
- Lastly, the appellant wishes to recover the costs of making an appeal because the planning authority misapplied the URH Act 2015 (as amended).

The grounds of appeal include the correspondence that accompanied the section 7(3) Notice, the notice itself, correspondence from the Council, estate agent's sales brochure and a copy of the proposed amendment (2) to the Development Plan.

6.2. **Planning Authority Response**

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

- The planning authority confirm their assertion that the site conforms to the requirements of a vacant site under the tests for a regeneration site.
- Site assessment took place in June 2017 and the Development Plan was amended in October 2018. The process has been timely and correctly applied.
- The site is in an area in need of renewal and the site is vacant, its condition is impacting on the character of the area.
- With regard to antisocial behaviour, the Westmeath Joint Policing Working Group (January 2017) highlighted that vacancy, dereliction and lack of maintenance can lead to crime and antisocial behaviour.

6.3. Further Submissions

The appellant takes issue with the statement made by the Council that both parties are in agreement that the site is vacant. The appellant has not been approached by the Council with respect to the arbitrary designation of commercial lands as regeneration lands. No evidence has been provided to state why the site is having an impact on the area, if so the question is posed, why is a primary school being developed on adjoining lands?

The appellant states that they have not had sight of the report prepared by the Council with respect to the Section 7(3) assessment. This has hampered their ability to prepare an appeal.

The site is well maintained, available for occupation and no evidence of anti-social behaviour is taking place on the premises.

6.4. Planning Authority Future Response

The planning reiterate their previous statements that the site is a vacant site.

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 commercially zoned lands identified 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, the planning authority served a defective notice and that the premises is ready for use though vacant at present. 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 a commercially zoned site and considered as regeneration lands for the purposes of the Vacant Site Levy.

- 7.2.2. There are other perceived procedural issues that have been raised by the appellant and I shall deal with these briefly. Firstly, the planning authority did have regard to the owner's 7(1) Notice submission and considered its contents, this confirms that procedures as outlined by Section 7(2) of the 2015 Act had been followed. 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. Instead, the appellant points to the readiness of the premises to be let or sold as a ready to go facility. This may be the case, however, the site appears to have been either vacant or idle for 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.

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 affects 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*'. In the proximity of the site, the wider area is characterised by warehouse and commercial premises set back from the road. The subject site is no different from surrounding developments. Specifically, the street elevation of the buildings on site are well maintained, the access gateway is secure and a parking forecourt is clean and tidy. Out of public view, the rear of the site is also moderately well maintained, however, during my site visit I noted some broken windows and overgrown yard areas. Internally, the buildings have been stripped of plant and machinery, there are areas of rain water ingress and refurbishment would probably be necessary in order to facilitate a marketable occupation.
- 7.4.3. The planning authority's impression of the site was slightly different to my own and highlights a lack of general maintenance and care as exhibited by peeling paintwork and the growth of weeds on areas of hardstanding. 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 shown 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.
- 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 impact 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 show signs of wear and tear, but they were not in my opinion ruinous or neglected at the time of my site visit. 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 more convinced by the photographic images presented by the planning authority that show the premises 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.

7.5. Other Matters

- 7.5.1. With reference to the statements made by the appellant with respect to a bringing the site in to beneficial use and their attempts to find a new occupier. 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.

Therefore, 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.

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 Newbrook Road, Clonmore, Mullingar, 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 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