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Bord  
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## Inspector's Report ABP-303581-19

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<b>Type of Appeal</b>	Section 9 Appeal against section 7(3) Notice.
<b>Location</b>	WH1271F, Newbrook Road, Clonmore, Mullingar, County Westmeath.
<b>Planning Authority</b>	Westmeath County Council.
<b>Planning Authority VSL Reg. Ref.</b>	MG4.
<b>Site Owner</b>	Peadar Conlon.
<b>Planning Authority Decision</b>	Place on Register.
<b>Date of Site Visit</b>	2 August 2019.
<b>Inspector</b>	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 WH1271F, 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 at the junction of Clonmore Road with Newbrook Grove, in the south western suburbs of Mullingar in County Westmeath. The immediate surroundings of the site are characterised by one and two storey suburban housing. However, the area north of the appeal site comprises a railway line, raiiling sidings and a maintenance depot.
- 2.2. The site comprises a two storey flat roofed building set in its own grounds, resembling a shop unit at ground floor with accommodation at first floor. There is a car parking forecourt to the front and a yard area to the rear. A low wall provides the boundary treatment to the public road and each vehicular entrance is blocked off with concrete ballast blocks. The building is generally in good repair not ruinous, but windows and doors are boarded up and the rear elevation together with parking areas are less well maintained.

## **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 28 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. **Mullingar Local Area Plan 2014-2020** - The site is located on lands zoned Residential – ‘To provide for residential development, associated services and to protect and improve residential amenity’.
- 3.2.2. The Mullingar 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 a new objective - O-DU5: 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 Mullingar Local Area Plan. For the purposes of clarity, ‘residential’ and ‘regeneration lands’ as identified in the Urban Regeneration and Housing Act 2015 to be interpreted within the Westmeath County Development Plan and associated Local Area Plans as follows: Residential: Includes all lands zoned ‘proposed residential’ and ‘existing residential’ sited within the plan boundary of Mullingar. Regeneration: Includes all lands zoned ‘mixed use’, ‘enterprise and employment’ ‘commercial’, ‘retail warehousing’, ‘innovation & technology’, ‘General Urban District’, ‘mixed urban core’ and ‘Major Regeneration Opportunity Sites’ within the plan boundary area of Mullingar.
- 3.2.3. In addition, Objective O-LZ1 (Residential (‘Proposed Residential’ and ‘Existing Residential’)) has been amended to add the following statement: All ‘proposed residential’ and ‘existing residential’ zoned lands within the plan boundary of Mullingar are subject to the provisions of the Urban Regeneration and Housing Act 2015 with respect to the Vacant Site Levy.

## 4.0 Planning History

### 4.1. Subject site:

**04/5515** – Redevelop Clonmore Shopping Centre by the addition of a retail unit and 5 apartments.

## 5.0 Planning Authority Decision

### 5.1. Planning Authority Reports

- A **Vacant Site Assessment Report** (first report), date of site inspection 13 June 2017, the site is identified as a regeneration site and the condition of the site is assessed against that criteria set out by section 6(6) of the Act. The site had been listed on the Derelict Sites Register but was delisted in 2012. Colour photographs and the site outlined in red accompanies the report. The planning history of the site is listed out and the recommendation was to issue a section 7(1) Notice.
- A **Vacant Site Assessment Report** (second report), outlines an additional site visit having taken place during October 2018, a description of the site, residential zoning and sets out the assessment criteria for a 'regeneration' site. In response to the landowner's submission, the planning authority note the owner's sporadic maintenance regime but detail the impact that a vacant and boarded up structure on Newbrook Road is having. A section 7(3) Notice was recommended.

The Council's submission includes a housing needs assessment, VSR table, copies of registered post details, chief executive's orders, section 7(1) and 7(3) notices, the owner's submission on the section 7(1) notice, a Derelict Sites (DS681) instruction letter dated 25 October 2018.

### 5.2. Planning Authority Notice

Planning Authority decided under section 7(3) to issue a notice on 28 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 Westmeath County Council have misapplied the Urban Regeneration and Housing Act (URHA). The purpose of the URHA is not to deal with unkept premises, that is the function of the Derelict Sites Act. The site was placed on the Derelict Sites Register, but then removed. A site already designated as a Derelict Site cannot also be a Vacant Site.
- Vacant sites should be clearly identified in the Development Plan, either for residential or regeneration purposes.
- The site is not vacant, because a receiver has been appointed since 5 October 2017.
- The written submission made to the Council on foot of the section 7(1) notice was ignored contrary to section 7(2) of the Act.
- The Notices were served on Paeder Conlon of Mullingar Electrical Wholesale Limited, not the registered owner Paeder Conlon, Finea Road, Castlepollard, County Westmeath. Therefore, the notices are faulty.

The grounds of appeal include a document entitled an instrument of appointment of receiver.

## 6.2. **Planning Authority Response**

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

- The VSL has been applied to a number of sites in the area for reasons of vacancy and the owner's site has not been targeted.
- Though recent correspondence to the owner refers to Derelict Sites and maintenance, the appeal site is not on the Council's Derelict Sites Register at present.
- Given the planning history of the site, it would appear that the site is suitable for housing.
- The relevant Notices were served to Paeder Conlon at Finea Road, Castlepollard, An Post records show this.
- The appointment of a receiver is noted.

- The owner's submission was addressed in the appropriate manner, process was duly followed and the site placed on the Register in accordance with the Act.

### 6.3. **Further Submissions - owner**

The appellant has responded to a number of the points made by the planning authority as follows:

- The site is a Derelict Site for the purposes of the Derelict Sites Act.
- The previous planning permission (04/5515) was made by Seamus Bracken (previous owner), no works were carried out and the permission dealt primarily with the redevelopment of the shopping centre.
- The section 7(1) and 7(3) Notices were not delivered to Finea Road, Castlepollard, but awaited collection from the relevant distribution centre. The Notices were not collected, and it is assumed that this is why the Council sent additional letters to Mullingar Electrical Wholesale Limited. Evidence from An post is attached to the submission.
- A meeting was requested by the owner, but not accommodated, letter enclosed.
- The owner requested a copy of the VSL report, in order to compose a submission in relation to the section 7(1) Notice, he was not accommodated.

### 6.4. **Further Submissions – planning authority**

The planning authority reiterates their previous submissions. In relation to the address to which the Notices were sent it is stated that additional Notices were sent to the owner's business address. Due process was accorded to the owner and their submission was taken into account during the decision making process to place the site on the register. Finally, the owner would have been accommodated with a meeting if time allowed.

## 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 28 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 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. In addition, the planning authority included in their assessment the criteria for residentially zoned lands. The lands are zoned for residential purposes.
- 7.1.3. The main concern of the appellant is that the Council have not properly served the section 7(1) and 7(3) Notices because they arrived at the wrong address. In addition, the processes and procedures employed by the planning authority do not accord with the 2015 Act, the PA failed to take account of the owner's submission. The site has been taken over by a receiver and so is not vacant. The site is a Derelict Site and so cannot also be a Vacant Site. The planning authority clarify that the site is not registered as a Derelict Site, proper processes were followed in servicing the Notices and placing the site on the Register. In addition, the appellant maintains that the Development Plan does not clearly identify vacant sites.

### 7.2. Procedural Matter

- 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 Residential – 'To provide for residential

development, associated services and to protect and improve residential amenity'. However, the planning authority applied the assessment criteria for regeneration lands as outlined by Section 5(1)(b) and Section 6(6) of the 2015 Act. In my view the planning authority arrived at the conclusion that the site was a vacant site for the reasons specified for regeneration sites and not residential sites. This is important because, though the outcome may be the same the tests are different. 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 residentially zoned site.

- 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 address to which Notices were sent has been questioned. I find that given the owner had engaged with the planning authority after the Section 7(1) Notice was issued and appealed to the Board on foot of a Section 7(3) Notice, the planning authority have done all within their power to alert the owner to their intentions. The fact that the planning authority had regard to the owner's 7(1) Notice submission and considered its contents also confirms that procedures as outlined by Section 7(2) of the 2015 Act had been followed. Finally, the owner has stated that a Derelict Site cannot also be a Vacant Site. This is not strictly true, Section 15(2) of the 2015 Act states:

*Vacant site levy shall not be payable in respect of any land in respect of which the derelict sites levy within the meaning of the Derelict Sites Act 1990 is payable in accordance with that Act.*

And, section 27 of the 2015 Act, that amends section 23 Levy Urban Land, paragraph(1)(a) of the Derelict Sites Act 1990 which states:

*The derelict sites levy shall not be payable in respect of any land in respect of which vacant site levy is payable in accordance with the Urban Regeneration and Housing Act 2015.*

In principle, a site can appear on both the Derelict Sites Register and the Vacant Sites Register, but the vacant site levy cannot be collected or vice versa. In this instance, the site has been removed from the Derelict Sites Register, a point that has

been made emphatically by the planning authority. Finally, the appellant maintains that the Development Plan is deficient in that it fails to identify vacant sites. Variation 2 of the Mullingar Local Area Plan 2014-2020 incorporated the provisions of the Urban Regeneration & Housing Act 2015 regarding the Vacant Site Levy and urban renewal and regeneration. I am satisfied that the planning authority have robustly amended the Development Plan to identify which lands are subject to the VSL.

### **7.3. Vacant/Idle**

- 7.3.1. The planning authority have accessed the site against the criteria set out by section 6(6) of the 2015 Act with reference to regeneration sites. But note that the site has been vacant for some time and that site visits over the twelve month period confirm this. I would agree with the planning authority that the site has indeed been vacant for some time and certainly for the required period prior to placement on the register. The appellant has not put forward any use for the site over the relevant period, other than to state routine maintenance and the appointment of a Receiver. However, in my mind this is purely an off site administrative event and not an actual on site use. I am satisfied that the site was vacant or idle in accordance with section 5(1)(a)(iii)(I) of the 2015 Act.

### **7.4. Housing need and suitability**

- 7.4.1. The appellant has not appealed the need for housing in the area or if the site is suitable for housing. In passing, 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 of which residential purposes are acceptable and the site had planning permission for redevelopment and housing. However, I am concerned that this information, useful though it is, has been used by the planning authority in addition to the criteria for regeneration sites in their specific site assessment report for MG4. As I have already outlined the planning authority assessed the site in the context of Section 5(1)(b) regeneration sites not residentially zoned lands. Consequently, I am not entirely certain that the site in question has been placed on the register under section 5(1)(a) or 5(1)(b) of the Act. It is however, probable 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.

- 7.5. 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, purely because the site is located on residentially zoned lands. However, as outlined above, I am not satisfied that the site has been entered on the register in an appropriate manner. The owner may have been disadvantaged in making their appeal because the lands were assessed under the criteria for regeneration sites as well as the criteria for residentially zoned lands. An error that can be easily rectified should the planning authority wish to pursue the matter and begin the process of registration again. It is this procedural 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 reference WH1271F, 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 28 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 assessment of the site was made under the criteria for residential lands as set out by sections 6(4) and 6(5) of the Act, incorrectly and in addition to the criteria for regeneration lands as set out by sections 6(6) of the Act.

the Board is not satisfied that the site was assessed in accordance with the requirements of the 2015 Act.

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Stephen Rhys Thomas  
Senior Planning Inspector

7 October 2019