



An
Bord
Pleanála

Inspector's Report

ABP-303979-19

Type of Appeal	Section 9 Appeal against section 7(3) Notice
Location	Lands at Cullenwood, Ballcullenbeg, Mountmellick, Co. Laois
Planning Authority	Laois County Council
Planning Authority VSL Reg. Ref.	VSL/ML/2016/7
Site Owner	Michael Anglim
Planning Authority Decision	Place on Register
Date of Site Visit	6 th January 2019
Inspector	Joanna Kelly

1.0 Introduction

- 1.1. This appeal refers to a section 7(3) notice issued by Laois County Council dated 21st February 2019 with the Chief Executive's Order stating that the site was placed on same on 21st February 2019. The Notice states that it is the Council's intention to enter a site Ref. VSL/ML/2016/7 at Cullenwood, Ballycullenbeg, Mountmellick, Co Laois on to the Vacant Sites Register (VSR).
- 1.2. The notice sets out that in accordance with section 5(1)(a) of the Urban Regeneration and Housing Act 2015 as amended, the site is situated in an area in which there is a need for housing, is suitable for the provision of housing and is vacant or idle for 12 months or more. The notice sets out that the legal basis for the application of the levy at this location is the designation of the 'Residential 2' lands in Mountmellick as eligible for the application of the levy as 'Residential 2' under Policy HP14 of the Laois County Development Plan 2017-2023 and objective H05 of the Mountmellick Local Area Plan 2018-2024. Folio no. LS5525 applies to the site.

2.0 Site Location and Description

- 2.1. The site is located to the northeast of Mountmellick, access from the R-422 via Briar Lane and Cullenbeg housing estate. No area is provided in the documentation. The site broadly comprises of brownfield lands that would appear to have been used as storage compounds associated with the adjoining residential lands as they there being developed. The lands have fencing to the perimeter of the site that bounds the housing estate. There are trees/hedgerows to the northern perimeter. The Owenass River runs along the north-western boundary of the site. There are housing units that have commenced but not yet completed (constructed has stopped) to the south of this landholding.

3.0 Statutory Context

3.1. URH ACT

- 3.1.1. The Notice issued under Section 7(3) of the Act states that the PA is of the opinion that the site referenced is a vacant site within the meaning of Section 5(1)(a) of the

Act. The Notice is dated 21st February 2019. I note that on the Register, a copy of which is included in the documentation, it states that the site was placed on the Register on 21st February 2019.

- 3.1.2. It is noted that the definition of vacant or idle has been amended by Section 63 of the Planning and Development (Amendment) Act 2018 which commenced upon coming into effect of the Act. This section of the Act amends Section 5 of the Act of 2015 by substituting Section 5(1)(a)(iii) for the following:

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”.

3.2. **Development Plan Policy**

The site is zoned for ‘residential 2’ – new proposed residential - in the Mountmellick Local Area Plan 2018-2024.

4.0 **Planning History**

File Ref. No. 03/1665 Permission granted to Wardrop Partnership for 250 residential units on the lands.

File Ref. No. 09/315 Extension of Duration sought in respect of File Ref. No. 03/1665 which was granted in July 2009 for two and half years. **File Ref. No. 12/6**

Extension of Duration sought in respect of File Ref. No. 03/1665 which was granted in 2012.

File Ref. No. 06/1913 Permission granted for minor amendments to previously permitted scheme Ref. 03/1665 which included revision to position of 20 no. house

type H2 and their respective car parking on site no's 27 to 46 inclusive. This permission was also subject to an extension of duration under File Ref. No. 12/6 in 2012.

5.0 Planning Authority Decision

5.1. Planning Authority Reports

A Vacant Site Register Planning Report, signed 5th November 2018 was prepared for the site.

- This notes that a section 7(1) Proposed Notice Entry issued on 3rd March 2018.
- A submission was received from Feargall Kenny which made reference to Laois County Council being the owner of the lands.
- The report concludes that while the applicant intends to development the lands based on the provisions of the Act the Planning Authority must proceed to place the site on the Vacant Site Register.

5.2. Planning Authority Notice

Planning Authority decided under section 7(3) to issue a notice on 21st February 2019 referencing sections 5(1)(a) of the Act and stating that the site has been entered onto the Vacant Sites Register. The notice issued to Michael Anglim.

6.0 The Appeal

6.1. Grounds of Appeal

An appeal was received from 'Fergall Kenny' on behalf of Michael Anglim which is summarised as follows:

- The notice has serious errors in terms of the facts presented. The map attached to the Notice does not contain a red line and as the map is not to scale it is difficult to identify the lands owned by Michael Anglim. A detailed study of the map shows that Michael Anglim is not the owner of the lands in

Folio LS5525 specified in the notice. The lands in Folio LS5525 are in the ownership of Laois County Council itself. Mr. Anglim is the owner of the adjoining lands in Folio LS16462F part of which are shown on the map accompanying the Council's Notice. The Notice is therefore legally defective.

- The lands that are within the ownership of Michael Anglim are not vacant within the meaning of the Act. In this case, the land has not been suitable for the provision of housing within the past 12 months.
- The subject site has been subject of adverse planning decisions by the Planning Authority and An Bord Pleanála on appeal on the basis of prematurity due to a deficiency in piped services.
- The availability of piped services was not finally established with Irish Water until September 2018.
- The site was also identified as a flood risk and was not rectified until the adoption of the new County Development Plan 2018-2024 in October 2018.
- Constraints imposed by the Planning Authority itself on the potential development of these lands it was not until the less than 6 months ago that it became clear that the land would be suitable for the provision of housing within the meaning of the Act.
- The lands in question are part of the last remaining unbuilt portion of the overall landholding pertaining to Ballycullenbeg site.
- Following the lapse of the parent permission, a subsequent permission was refused by the planning authority and An Bord Pleanála on the basis that the development would be premature by reference to an existing deficiency in the provision of public water supplies and sewerage facilities.
- The lands lay undeveloped while awaiting the recovery of the housing market.
- When it was decided to proceed with an application, a new problem arose, a strategic flood risk assessment prepared identified part of the site as being in Flood Zone B.
- Advised could not progress the proposed development of the lands until such time as the Office of Public Works issued the CFRAM maps for the area. These were not published until 2018.
- Discussions were on-going with officials and Cluid Housing regarding provision of housing during this period.

- Then a Notice issued 18th March 2018 from the planning authority notifying him of the proposed entry of the lands onto the vacant site register.
- Pre-planning has been held and intended to lodge application by Easter 2019.
- Request that Board cancel entry of this site on the Council's Vacant Site Register on the grounds that the Notice is erroneously drafted and legally defective and that the lands LS16462F were not a vacant site within the meaning of the Act.

6.2. PA response to Grounds of Appeal

None received

7.0 **Assessment**

7.1. Process

There are a number of matters of process which I propose to address. Firstly, the matter of the 12 month period.

7.2. 12 Month Period

I would refer the Board, in the first instance, to an issue pertaining in relation to the 12 month period prior to the placing of the site on the Register as per the Section 7(3) Notice currently appealed. Section 6(2) of the Act is very clear. It states that a planning authority shall enter on the register a description including a map of any site in its functional area which was, in the opinion of the planning authority, a vacant site for the duration of the 12 months preceding the date of entry. This is very clear. The subject site is stated to have been placed on the Register on 21st February 2019 with the Notice dated the same date meaning that the relevant 12 month period would have commenced on 22nd February 2018. I would note that there is no report on file from the planning authority which refers to a site inspection which informed their placing of the site on the register. I do however note that there are photographs on file which are signed and dated 26th October 2016 which would imply that the lands

were inspected on that date. These are the only photographic evidence of any site inspection.

7.3. Therefore, if the site was inspected for the first time for the purposes of the Vacant Site Levy process on 26th October 2016, the planning authority cannot categorically state that, in respect of the definition of vacant or idle in section 5(1)(a)(iii) of the Act, the site was vacant and idle on 22nd February 2018 which would comprise the commencement of the 12-month period. While this may appear to be a tedious approach to the matter at hand, the Act is very clear that the relevant period for consideration is the 12 month period preceding the date of entry. It is incumbent on any planning authority to have details of inspections which can clearly indicate that in their opinion the site was vacant or idle for the 12 months preceding placing the site on the Register. It is not sufficient to assume so. I, therefore, recommend that the Notice issued should be cancelled on the basis of this defect in the process. I consider that the Planning Authority could recommence the process once they have evidence that the site has been vacant or idle for the period of 12 months preceding the placement of the site on the Register. I would also note that the Board has included this reason in their decision to cancel such Notices in a number of other instance although I accept in this instance that the site would appear to have been inspected early in the process in 2016 before final entry onto the register in 2019. However, the Act is clear that the period referred to is the '12 month preceding the entry onto the register'.

7.4. Notices to relevant Landowners

The documentation submitted from Laois County Council indicate that two folios 5525 and Folio 16462F pertains to the lands identified at Ballycullenbeg, in the Barony of Portnahinch and with a postal address of Cullenwood, Ballycullenbeg, Mountmellick, County Laois. A Section 7(1) Notice of Proposed Entry issued on 13th March 2018 referring to these folios. Pursuant to this notice, Mr. Michael Anglim indicated in a submission (received by Laois County Council 4th April 2018) that is was not the owner of the lands in Folio 5525 which were understood to be in the ownership of Laois County Council. A letter (dated 18th April 2018) in response to this submission issued to Mr. Michael Anglim's agent, Mr. Feargall Kenny indicating

that the recorded landowner on Folio 5525 had been amended to Laois County Council and that while the applicant's intention to develop the lands is acknowledged the planning authority now proceed to place the site on the Vacant Site register as per the Notice attached. It is unclear what Notice was attached.

Michael Anglim has submitted that the notices are legally defective. The maps on file submitted from Laois County Council are not clear as to the full extent of the lands pertaining to the Folio LS5525 and Folio 16462F. Pursuant to the Notice of Intention of entry and Section 7(3) Notice, Laois County Council has accepted that they are in fact the registered owner of Folio 5525.

Documentation on file is confusing as to which Notice issued to the landowner. There is a copy of a Notice that issued under Section 7(3) amended to reflect one folio in respect of the lands, i.e. 16462F which is owned by Michael Anglim. However, a copy which is titled 'a REGISTER POST copy' referred to Folio LS5525 which, as it has been established, are in fact in the ownership of the Council. The submission submitted on behalf of Mr. Michael Anglim provides a copy of the Notice he received which refers to Folio LS5525. Therefore, I consider that the Notice incorrectly refers to lands not owned by Mr. Michael Anglim.

7.5. Housing Need

The landowner accepts in in the grounds of appeal that there is a need for housing.

7.6. Suitability for Housing

(a) The Core Strategy

The subject lands are zoned for residential development in the Mountmellick Local Area Plan 2018-2024 which was adopted 10th September 2018 and came into effect on 8th October 2018 which post-dates the Section 7(1) notice.

The subject lands were zoned 'Residential 2' in the previous Mountmellick Plan 2012-2018. It is noted that a portion of the southern section of the lands were identified as being in Flood Zone B and small section of lands to the north are located within Flood Zone A.

They are located in an established urban area and I consider that the proposed site is consistent with the provisions of the core strategy and represents a sequential approach to development.

(b) Whether the site was served by the public infrastructure and facilities (within the meaning of section 48 of the Act 2000) necessary to enable housing to be provided and serviced.

The submission on behalf of Mr. Michael Anglim sets out issues pertaining to the servicing of the site and in particular site history whereby permission was refused for reasons pertaining to prematurity by reference to constraints in provision of water supply and sewerage facilities. However, this refusal by ABP under File Ref. No. 11.22541 was issued in 2007 and it would appear that there is now adequate public infrastructure and facilities to enable housing to be provided. It is not clear when the public infrastructure and facilities became available and this matter is not expressly dealt in the planning authority's documentation. I note that there is a letter on file from Mr. Feargall Kenny dated 2nd February 2018 which refers to the fact that the subject lands are zoned and serviced. I note that the appeal refers to the availability of piped services was not finally established with Irish Water until 27th September 2018, however I do not consider that this actually means there was no availability of such services but rather refers to the process of engagement by the landowner and Irish Water. In the absence of information to the contrary, I am satisfied that the site is served by adequate public infrastructure necessary to enable housing to be provided and serviced and would have been adequately served in the preceding 12 months prior to the issuing of the Section 7(1) Notice.

(c) Whether there was anything affecting the physical condition of the land comprising the site which might affect the provision of housing

It is set out that flood risk arose as a new issue in 2016 and an email issued from the County Council which indicated that the proposed development could not be progressed until such time as the Office of Public Works issued the CFRAM maps for the area. A copy of the email was submitted as Appendix 6. This email is dated 15th March 2016. It is set out that these maps were not published until May 2018 and it is noted that the Section 7(1) Notice issued in March 2018. While I accept that

there was an issue regarding possible flood risk associated with the site, the lands were zoned as part of the development plan process and deemed suitable for housing. A site-specific flood risk assessment could have been prepared to address the issue prior to the publication of the CFRAM maps. However, I also consider that Mr. Michael Anglim acted reasonably in that the advice conveyed to him was to await the publication of the CFRAM maps albeit it nearly 26 months later. It would appear counter intuitive to instruct the landowner to await the publication of the CFRAM maps and yet prior to their publication issue a Section 7(1).

7.7. Vacant or Idle/Purpose of the Lands

In relation to the vacancy or otherwise of the site or part thereof, there are a number of considerations. Firstly, as outlined in Section 3.1 above, Section 5(1)(a)(iii) has been amended by Section 63 of the Planning and Development (Amendment) Act, 2018 which provides that it states that 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.”.

I will address both (I) and (II) in turn.

7.8. **Vacant or Idle**

The appellant has set out that the lands are not vacant or idle. Having regard to the concerns outlined above in relation to the 12-month period I do not consider that the Board can categorically state that the site was vacant or idle for the 12-month period concerned and in this regard, I do not consider that it can be determined categorically that the site is vacant or idle. I accept that this matter appears tedious however the wording of the Act is clear regarding the period of time in which the site was to be vacant or idle prior to entry on the register.

7.9. Purpose of the Lands

Section 63 of the Planning and Development (Amendment) Act, 2018 provides a revised definition of Section 5(1)(a)(iii) of the Act with subsection (II) included and referring to sites which are 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.”.

I note that the appellant does not claim that the site is being used for any specific purpose and I do not consider that this section is applicable in this instance.

8.0 Recommendation

I recommend that in accordance with section 9(5) of the Urban Regeneration and Housing Act 2015, the Board should cancel the entry on the register of site (VSL/ML/2016/7) lands at Cullenwood, Ballycullenbeg, Mountmellick, County Laois was vacant or idle for the 12 months concerned. I also note that the Notices on file do not refer to the correct folio map in respect of the lands in question. Therefore, the entry on the Vacant Sites Register on the 21st February 2019 shall be cancelled.

9.0 Reasons and Considerations

Having regard to

(a) the information submitted to 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 Inspector,

(d) the absence of sufficient evidence to support the contention of the planning authority that the site was vacant and idle for the period of 12 months preceding the date of placing the site on the register,

(e) the reference to the Entry of Lands comprised in Folio LS5525 onto the Vacant Site Register in the Section 7(3) Notice which are not in the ownership of the person in receipt of the Notice

the Board considered that it is appropriate that a notice be issued to the planning authority to cancel the entry on the Vacant Sites Register.

Joanna Kelly

Senior Planning Inspector

9th January 2020