



An
Bord
Pleanála

Inspector's Report

ABP-303998-19

Type of Appeal	Section 9 Appeal against section 7(3) Notice
Location	Lands at Cooltederry, Ballymorris Road, Portarlinton, Co. Laois
Planning Authority	Laois County Council
Planning Authority VSL Reg. Ref.	VSL/PG/2018/8A
Site Owner	Kingscroft Developments Ltd.
Planning Authority Decision	Place on Register
Date of Site Visit	4 th September 2019
Inspector	Joanna Kelly

1.0 Introduction

- 1.1. This appeal refers to a section 7(3) notice issued by Laois County Council dated 17th April 2018 with the Register stating that the site was placed on same on 31st January 2019. The Notice states that it is the Council's intention to enter a site Ref. VSL/PG/2016/8a at Castlelea View, Portarlinton, Co Laois on to the Vacant Sites Register (VSR).
- 1.2. The Section 7(3) Notice sets out that Laois County Council decided to enter the site onto the Vacant Site Register in accordance with Section 5(1)(a) of the Urban Regeneration and Housing Act 2015 (as amended) as the site is situated in an area in which there is a need for housing; the site is suitable for housing and the site, or the majority of the site is vacant or idle for 12 months or more.
- 1.3. Folio no. 19332F applies to the site.

2.0 Site Location and Description

- 2.1. The site is located to the south of Portarlinton town and is accessed from the Ballymorris Road via Lansdowne Road estate. The lands are currently inaccessible due to the presence of palisade fencing. There is a rail-line along the western boundary of the site and existing housing to the northern and eastern boundaries. There is another VSL site to the southern boundary of the site File Ref. No. 304040-19. There were ponies/horses on the lands at time of inspection.
- 2.2. The link road from the R-419 and Ballymorris Road is not finished in that it has not had a final hard-wearing course and it is impassable to vehicles due to the presence of large boulders at the roundabout to the western section of this road. Lands beyond this roundabout were noted as being used by travellers at time of inspection.

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. A copy of the Chief Executive's Order

ordering the placing of the site on the Register is enclosed and dated 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’ in the Portarlington Joint Local Area Plan 2018-2023.

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.

File Ref. No. 18/422 Permission granted in May 2019 for residential development comprising of 62 units. Primary vehicular access will be via the existing internal road network with entry from two no. roundabouts located along the east west distributor road that links the R419 and Ballymorris Road.

5.0 Planning Authority Decision

5.1. Planning Authority Reports

- A Vacant Site Register Planning Report, signed 27th November 2017 and co-signed on 14th December 2017 by the A/SEP was prepared for the site which provides a legislative background,
- It is set out that there is a need for housing, as identified in the Laois County Development Plan 2017-2023 in the towns of Portlaoise, Portarlington, Mountmellick and Graigcullen.
- The subject lands are suitable for the provision of housing. The lands have been subject to works but all construction has now ceased.
- The lands comprise a vacant or idle parcel of land, which has been effectively abandoned following initial construction phases.
- The subject lands exceed the 0.05ha threshold required in order to constitute a 'site' under the Act. The lands therefore constitute a vacant site, in accordance with the provisions of the Act and it was recommended that the lands should be included on Vacant Site Register.
- Photographs confirming a site inspection was undertaken are enclosed dated 17th November 2017.

- A second report dated 5th November 2018 states that further to the original planning report dated 14th December 2017, the lands constitute a vacant site in accordance with the provisions of the Urban Regeneration and Housing Act 2015 as amended and it is recommended that the lands should be included on the Vacant Site register and a Section 7(3) Notice should be issued.

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 notices issued to five Directors of Kingscroft Developments Limited.

6.0 The Appeal

6.1. Grounds of Appeal

An appeal was received from 'The Planning Partnership' on behalf of Kingscroft Development Ltd. which is summarised as follows:

- Kingscroft Dev. Ltd. is in the process of actively completing the Castlelea/ Lansdowne Estate within the confines of timeframes of the decision to grant permission under File Ref. No. 18/422 for a residential development on approximately 2.65 ha of the subject lands.
- Given the site has recently been granted permission it is submitted that it is not reasonable in this instance that the site be considered for entry onto the register.
- The site is extensively serviced and works carried out and in place in terms of the Laois County Council Plan.
- The site does not meet the criteria for a vacant site in respect of either residential or regeneration and the levy must not be applied.
- Question the validity of the Notice of Entry on Laois County Council's vacant site register section 7(3) as no reasoning assessment has been cited for the

required tests and that the text presented within the Notice is merely copied text direction from Section 5(1)(a) of the URH Act 2015 as amended.

- Reference in the Notice to the Objective H05 of the Portarlington Joint Local Area Plan 2018-2024 refers to land that are in need of renewal or regeneration and as such require tests as outlined per section 5(1)(b) of the UHR Act as not been detailed or undertaken.
- The appellant has been prejudiced by the service of this invalid notice as it has not been able to rebut the Council's specific reasoning for making its assessment that the lands consist of regeneration land within the meaning of Section 5(1)(b) of the URH Act.
- The subject lands have not been identified by the planning authority as lands that are in need of renewal or regeneration and as such required tests outlined per section 5(1)(b) of the URH Act are irrelevant.
- The clear need for housing in the Portarlington area is acknowledged by Kingscroft Dev. Ltd. This is confirmed by the core strategy set out in the Laois County Development Plan and the Portarlington Joint LAP which outlines that Housing Strategies have identified a housing need in Portarlington.
- Kingscroft Development Ltd. has in the 12 months prior to the proposed entry onto the register, actively taken steps to ensure that extant planning permissions remained implementable for as long as possible.
- It is considered that the site is brownfield in nature and therefore not vacant.
- If the levy is applied, it will not increase the speed that houses will be constructed on the site. It will ultimately only increase the cost for each house constructed, thus undermining the ability of residents to purchase the dwellings.
- The Board can justifiably conclude that the subject site is not a vacant or idle site under the terms of the UHR Act.
- The exclusion of the lands from the register accords with the spirit and intent of the URH Act which was to spur development.

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

The subject site is stated to have been placed on the Register as per the Section 7(3) Notice currently appealed on 21st February 2019. 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 also dated 21st February 2019 meaning that the relevant 12 month period would have commenced on 22nd February 2018. I note that the reports prepared by the planning authority refers to a site inspection which informed their intention to place on the register the said lands. In relation to the subject site it is stated in the report prepared to support the inclusion of the site on the register (planning report dated 27 November 2017 and co-signed 14th December 2017) that the site was inspected on 17 November 2017. I note that there are photographs which have been dated 17 November 2017 attached to the planning report. While the quality of some of the photographs is poor, I am satisfied that they do relate to the lands in question. 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 duration of the 12 months concerned and continues to be a vacant site. I am satisfied that there is sufficient photographic evidence including photos from 2016 on file to demonstrate that the site has been vacant/idle for the relevant 12 month period and continues to be vacant/idle.

7.3. Notices to relevant Landowners

The documentation submitted from Laois County Council indicate that one folio pertains to the lands. There are six notified owners/interested parties and a copy of each of the Section 7(1) (Notice of Proposed Entry) and the Section 7(3) Notices sent are on file. I note the reference by the appellant to the lack of reasons contained within the Section 7(1) notices regarding notice of proposed entry however copies of said notices are on file and clearly set out the reasons for proposed entry. One of the reasons include that the site was vacant/idle for 12 months or more.

7.4. Housing Need

The Planning Authority in their report set out that Laois County Development Plan 2017-2023 provides an assessment of the area of the county where there is a need for housing and determines that such a need exists in Portlaoise, Portarlington, Mountmellick and Graiguecullen. In general, having regard to the provisions of section 6(4) of the Act I consider that there is sufficient evidence to determine that there is a need for housing in the area. The landowners also accept in in the grounds of appeal that there is a need for housing.

7.5. Suitability for Housing

(a) The Core Strategy

The subject lands are zoned for residential development in the Laois County Development Plan 2017-2023. They are located in an established urban area and have an extant permission. 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.

I am satisfied that the site is served by adequate public infrastructure necessary to enable housing to be provided and serviced.

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

I do not consider that there is anything that is currently affecting the physical condition of the land which might affect the provision of housing.

7.6. 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.

7.7. Vacant or Idle

The appellants argue that the site is not vacant or idle primarily due to the provision of infrastructure on the said lands and that permission has recently been granted planning permission for housing and is being actively developed. However, an extant permission is not a consideration as set out in Appendix 3 of the Circular Letter PL7/2016 issued in relation to the levy. The subject lands remain fenced off with no construction activity or development occurring on site. Having regard to the photographic evidence on file and pursuant to my site inspection, I am satisfied that the lands are considered vacant / idle and have been for the duration of the 12-month period concerned and continue to be idle/vacant.

7.8. **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 do not consider this section to be relevant 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 confirm the entry on the register of the subject lands at Cooltederry, Ballymorris Road, Portarlinton, Co. Laois.

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 majority of the site was vacant or idle, there was a need for housing in the area, the site was suitable for the provision of housing and insufficient reason has been put forward to cancel the entry on the Vacant Sites Register.

the Board is satisfied that the site was a vacant site for the relevant period and on the date on which it was entered on the register.

Joanna Kelly

Senior Planning Inspector

11th September 2019