



An
Bord
Pleanála

Inspector's Report ABP-304039-19

Type of Appeal	Section 9 Appeal against Section 7(3) Notice
Location	Cloonroosk Little, Maryborough Village, Mountrath, Portlaoise, Co. Laois
Planning Authority	Laois County Council
Planning Authority VSL Reg. Ref.	VSL/PL/2016/6
Site Owner	John, Pat and Peter Booth
Planning Authority Decision	Place on Register
Date of Site Visit	18 th July 2019
Inspector	Erika Casey

1.0 Introduction

- 1.1. This appeal refers to a Section 7(3) Notice issued by Laois County Council, stating their intention to enter a site referred to as site at Cloonroosk Little, Maryborough Village, Mountrath Road, Portlaoise, Co. Laois onto the Vacant Sites Register (VSR) in accordance with the provisions of Section 6(2) of the Urban Regeneration and Housing 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) of the URH Act 2015.
- 1.2. The appeal site registered under VSL reference VSL/PL/2016/6, has a number of registered owners: John Booth, Patrick Booth and Peter Booth.

2.0 Site Location and Description

- 2.1 The subject site has an area of 1.27 ha and is located to the west of Portlaoise town centre (c. 1.3km) on a former dairy site on the north side of the Mountrath Road (R445). The site is currently not in use and the former dairy buildings have been demolished, although some areas of hard standing remain. The site has a relatively level topography. There is a low wall along the site frontage with access road to the Mountrath Road. The site is served by a public footpath and development in the vicinity is primarily residential in character.
- 2.2 A two storey terraced house adjoins the site to the east. There is a dormer bungalow on the western side of the site. There are trees/hedgerows along the northern and partially along the eastern and western site boundaries. The residential areas Rockdale and Dromadoon are to the east and Clonroosk Little to the west. Maryborough Village is a new residential area that has been constructed to the west and north of the site. The IDA Ireland Business and Technology Park is located opposite the site.

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 the 21st of February 2019 and is accompanied by a map outlining the extent of the site to which the Notice relates. Prior to this, a Notice of Proposed Entry on Laois County Council's Vacant Site Register was issued to all landowners.

3.1.2. Section 5(1)(a) of the Act states that a site is a vacant site if, in the case of a site consisting of residential land:-

- (i) the site is situated in an area in which there is a need for housing,
- (ii) the site is suitable for housing, and
- (iii) the site, or the majority of the site, is vacant or idle.

3.1.3. It is noted that Section 5(1)(a)(iii) has been amended by Section 63 of the Planning and Development (Amendment) Act 2018 which commenced upon coming into effect of the Act (19 July 2018). 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”.

3.1.4 The Act defines 'residential' land in Section 3 as follows:

“residential land” means land included by a planning authority in its development plan or local area plan in accordance with section 10(2) of the Act of 2000 with the objective of zoning for use solely or primarily for residential purposes, and includes any structures on such land.

3.1.5 Section 17 of the Act addresses death or change of ownership with regard to vacant sites and the amount of vacant site levy to be charged.

3.2. Development Plan Policy

Portlaoise Local Area Plan 2018-2024

3.2.1 The subject site is within the administrative area of Laois County Council and the relevant statutory plan is the Portlaoise LAP 2018-2024. Under the plan, the site is zoned Residential 2 – New Proposed Residential: *“To provide for new residential development, residential services and community facilities”.*

3.2.2 It is stated in the plan:

“This zone is intended primarily for housing development but may include a range of other uses particularly those that have the potential to facilitate the development of new residential communities such as open space, schools, crèches, small shops, doctor’s surgeries, playing fields etc.

The improved quality of residential areas and the servicing of orderly development will be priority. New housing and infill developments should be of sensitive design, which are complimentary to their surroundings and do not adversely impact on the amenity of adjoining residents. No piecemeal development can take place unless it does not conflict with the possible future development of the reserved development areas of the town.”

3.2.3 Section 8.1 of the plan sets out key objectives including:

- *To support and facilitate sustainable intensification and consolidation of the town centre and in established residential areas.*
- *To focus new residential development into brownfield sites.*

3.2.4 Chapter 13 of the Plan addresses Housing and is stated:

“Following economic recovery new residential development will become a key issue for the growth of Portlaoise during this plan period. This plan places a strong emphasis on providing quality residential developments in the existing built envelope of the town.”

3.2.5 The following policies are of relevance:

Policy HO5:

“To utilise the provisions of the Urban Regeneration and Housing Act 2015 (Vacant Site Levy) to facilitate the appropriate development of vacant sites (residential zoned lands) that are in need of renewal or regeneration.”

Policy HO8:

“To encourage appropriate housing development on infill and brownfield sites subject to preservation of existing residential amenity, the provision of a high quality design respecting the established character, density and layout, compliance with all traffic safety, quantitative and qualitative standards of the Laois County Development Plan 2017 – 2023.”

Laois County Development Plan

3.2.6 Section 3.3 of the County Plan sets out further policy regarding the implementation of the Urban Regeneration and Housing Act 2015. Under section 3.3.1, it is detailed that Laois County Council has determined that a need for housing exists in the Towns of Portlaoise, Portarlington, Mountmellick and Graiguecullen.

3.2.7 It is further detailed that:

(a) The projected increase in the number of households as per Core Strategy and Housing Strategy during the period 2017-2023 is significant – **Portlaoise (1,824)**, Portarlington (271), Mountmellick (257), Graiguecullen (215).

(b) The cost of house prices and the cost of renting are increasing indicating increased housing need. A table is set out where it is detailed that according to the PRTB, rents in Portlaoise increased from €548.21 in 2014 to €597.76 in 2015.

(c) Cited area of choice on social housing waiting list (September 2016) indicate housing need in these Towns – **Portlaoise (944)**, Portarlington (377), Mountmellick (322), Graiguecullen (63).

(d) The number of habitable houses available for purchase and for rent is less than 5% of the total number of habitable houses in the area, indicating housing need. A table is set out that detailed that in Portlaoise there were only 208 units available for sale or rent which is less than 5% of the total number of habitable houses in the area.

3.2.8 The plan sets out a number of policies regarding vacant sites including:

***HP12** Maintain the Laois Register of Vacant Sites, entering or deleting Sites from the Register in accordance with the Urban Regeneration and Housing Act 2015 and related Departmental Guidance;*

***HP 14** Implement the provisions of the Urban Regeneration and Housing Act 2015 by entering vacant housing sites on the Laois Register of Vacant Sites and thereafter imposing levies in accordance with the Act within lands zoned Residential 1 or Residential 2 in Portlaoise, Portarlington, Mountmellick, Graiguecullen and any other Laois towns with an identified housing need, as appropriate;*

4.0 Planning History

Planning Authority Reference 09/764/Appeal Reference PL11.237450

4.1 Permission granted by the Board in December 2010 for a mixed use development including retail, off licence, public house and a restaurant.

Planning Authority Reference 16/2

4.2 Permission granted by Laois County Council in February 2016 for an extension of duration of permission with respect to Ref. 09/764. Permission will expire in December 2020.

5.0 Planning Authority Decision

5.1. Planning Authority Reports

5.1.1 A Vacant Site Report (28.11.2017) was prepared for the site outlining the dates of the visit to the site, description of the area, zoning, planning history and the type of site for the purposes of the Act which in this case is Residential. The following key points are noted:

- Site visit was undertaken on the 07.11.2017.
- The subject lands comprise an undeveloped parcel of land.

- The lands are suitable for the provision of housing in accordance with the Edge of Centre zoning applying at the current time.
- There is an extant permission for a mixed use development on the site, however, given the predominantly residential nature of development in the area, it is considered that residential development would be applicable.
- The lands comprise a vacant or idle parcel of land and it is recommended that the site be included on the Vacant Site Register.

5.1.4 A further Planning Report (05.11.2018) was prepared in response to a submission received opposing the proposed entry onto the VSL register. This noted that the site is zoned Residential 2, 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. It recommended that the lands should be included on the Vacant Sites Register and that a section 7(3) Notice be issued.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1 An appeal was received from John, Pat and Peter Booth on the 20th of March 2019 which can be summarised as follows:

- State that they no longer own the site. State that it was sold in 2016 to SNJ Properties Ltd., Corrigeen, Stradbally, Co. Laois.
- Attach a copy of a derelict site notice (reference 19/12) issued to SNJ Properties Ltd. on the 18th of February 2019 with respect to a site at Mountrath Road, Portlaoise. Co. Laois.

6.2. Planning Authority Response

6.2.1 No response received.

7.0 Assessment

7.1. Introduction

7.1.1. This notice has been issued under the provisions of Section 5(1)(a) of the Act which relates to 'residential' lands. The appellants principal ground of appeal is that ownership of the site has changed. This is addressed further below. I will firstly consider if the site constitutes a vacant site having regard to the provisions of the Act.

7.1.2. Section 5(1)(a) of the Act states that a site is a vacant site if, in the case of a site consisting of residential land:-

- (i) the site is situated in an area in which there is a need for housing,
- (ii) the site is suitable for housing, and
- (iii) the site, or the majority of the site, is vacant or idle.

7.1.3. As I note above, Section 5(1)(a)(iii) has been amended by Section 63 of the Planning and Development (Amendment) Act 2018 which commenced upon coming into effect of the Act (19 July 2018). 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”.

7.1.4 Section 6 (4) determines whether or not there was a need for housing in an area within the Planning Authority's function area by reference to:

(a) the housing strategy and the core strategy of the planning authority

(b) house prices and the cost of renting in the area

(c) The number of households qualified for social housing support in accordance with section 20 of the Housing (Miscellaneous Provisions) Act 2009 that have specified the area as an area of choice for the receipt of such support and any changes to that number since the adoption of the planning authority's development plan and

(d) whether the number of habitable houses available for purchase or rent was less than 5% of the total number of houses in the area.

7.1.5 Section 6(5) of the Act determines the suitability of a site for housing having regard to:

(a) the core strategy

(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, and

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

The site is situated in an area in which there is a need for housing:

7.1.6 The subject site is located within the environs of Portlaoise. It is detailed in the Local Area Plan that the town has experienced considerable urbanisation and expansion in recent years.

“Due to its proximity to Dublin, Portlaoise has experienced significant population growth, which has in turn placed an even greater demand on the town's infrastructure, in particular education, housing, recreational amenities and services.”

7.1.7 Under the core strategy for the town, it is identified that there is a requirement for 78ha of land in order to accommodate planned growth.

7.1.8 As noted above, Section 6(4) outlines the criteria in considering whether or not there was a need for housing in an area. Section 3.3.1 of the Laois County Plan sets out information regarding the projected number of households required in Portlaoise, the average cost of renting which is increasing, the cited area of choice on the social housing list which indicates a significant demand for units in Portlaoise and that the

number of habitable houses available for purchase and for rent is less than 5% of the total number of habitable houses in the area.

7.1.9 Having regard to the foregoing, I am satisfied that there is sufficient evidence to indicate that there is a need for housing in Portlaoise.

The site is suitable for housing:

7.1.10 The criteria for assessing the suitability for housing are set out under section 6(5) of the Act.

The Core Strategy

7.1.11 The subject site is zoned for residential development under the Portlaoise Local Area Plan 2018-2024. As detailed above, the core strategy sets out that there is a significant need for housing in the town over the plan period. The site is located in an established urban area in close proximity to existing social and physical infrastructure and the Town Centre. The site is zoned for residential development with the specific objective to “*To provide for new residential development*”. I consider the proposed site to be entirely consistent with the provisions of the core strategy set out in the County Plan.

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

7.1.12 The subject site is located within the urban area of Portlaoise and is serviced by existing public infrastructure and facilities. There are several housing developments in proximity to the site. I note that there is an extant permission on the site for a mixed use scheme. An extension of duration on this permission was permitted until 2020 under Planning Authority Reference 16/2. No constraints in terms of physical infrastructure were identified by either the Planning Authority or the Board when this development was permitted.

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

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

7.1.17 There are no factors affecting the physical condition of the land which may affect the provision of housing.

Vacant or Idle/Purpose of the Lands

7.1.18 I note that the appellant has not contested that the site is vacant or idle. The subject lands are undeveloped and there is no evidence of any activity or use for any purpose that would warrant a determination that their condition is no longer vacant or idle.

Other Issues

Land Ownership

7.1.19 The appellant states that the ownership of the site has changed and that it is now in the control of SNJ Properties Ltd. Change of ownership has no impact upon the assessment of whether a site should be included on the VSR or not. Section 17 of the 2015 Act, sets out procedures in relation to the charging of the levy, change of ownership is relevant in that instance. Irrespective of any change of ownership, the burden of demonstrating whether a site is vacant or not lies with the owner, as set out in Section 9(2) of the 2015 Act.

7.1.20 Furthermore, I note that the appellants have not provided any documentary evidence to support the statement that the entirety of the site covered by the notice is not in their ownership. I note that under s.9 of the Act the burden of proof in making a case on appeal rests with the appellant. It is my opinion that this requirement has not been met in this instance and clear documentary evidence is required for the claims regarding ownership to be substantiated. The only documentation submitted is a derelict site notice referring to a site at Mountrath Road. It is unclear as to whether this is the same site as the subject site. No other legal documentation is provided. No land registry details or letter from a solicitor confirming a change in ownership is provided.

7.1.21 In conclusion, I consider ownership issues do not constitute a planning reason for considering that a site is not suitable for the provision of housing. If the site complies with the requirements of section 6(5) of the 2015 Act, then it is suitable for housing

irrespective of legal matters. However, the Board may wish to seek further documentary evidence from the Planning Authority that the notice served has been issued to the correct owners of the subject site.

8.0 Recommendation

8.1. I recommend that in accordance with Section 9(5) of the Urban Regeneration and Housing Act 2015 (as amended), the Board should confirm the entry on the register of site (VSL/PL/2016/6) was a vacant site for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 21st of February 2019 shall be deemed to take effect from that date.

9.0 Reasons and Considerations

9.1 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) That the majority of the site is vacant or idle, there is a need for housing in the area, the site is suitable for the provision of housing, and that insufficient reason is put forward to cancel entry on the Vacant Sites Register.

The Board is satisfied that the site was a vacant site for the relevant period.

Erika Casey
Senior Planning Inspector

13th of August 2019