



An
Bord
Pleanála

Inspector's Report

ABP-304040-19

Type of Appeal	Section 9 Appeal against section 7(3) Notice
Location	Lands at Cooltederry lands west of Ballymorris Road, Portarlinton, Co. Laois
Planning Authority	Laois County Council
Planning Authority VSL Reg. Ref.	VSL\PG\2016\8b
Site Owner	John Booth and Others
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 section 7(3) notices issued by Laois County Council dated 21st February 2019 with the Chief Executive's Order 11/2019 setting out in the notice that it is the Council's intention to enter the site VSL/PG/2016/8b at Cooltderry in the Barony of Portnahinch in the County of Laois with an postal address of Ballymorris Road, Portarlingotn, Co Laois on the Vacant Site Register and declared vacant pursuant to section 5 of the URH Act of 2015.
- 1.2. The Section 7 (3) Notices which issued individually to Patrick Moore, John Booth, Patrick Booth, Peter Booth, Donal Booth, Marion Booth, Denis Booth, David Hyland, and Peter Conran all of Patricks Court, Patrick Street, Kilkenny 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 Portarlington 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 Portarlington Joint Local Area Plan 2018-2024.
- 1.3. Folio no. 8494 apply to the lands.

2.0 Site Location and Description

- 2.1. The site is located to the southwest of Portarlington, accessed from the Ballymorris Road via the Castleview Distributor road serving a number of housing estates. The lands are just within the development boundary identified in the Portarlington LAP and were not accessible at time of inspection as fencing is erected around the undeveloped lands immediately adjacent the Castlelea estate. Drawing No. VSL-PL-8b indicates that the site has an area of 1.15 hectares. 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 were being developed. There is a railway line to the southern perimeter of 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 Planning Authority 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 the Chief Executive's Order which is included in the documentation, states that it is the Council's intention to enter the site on the Register 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 – New Proposed Residential (Residential OCC)' in the Portarlington Joint Local Area Plan 2018-2024.

TM 03: Preserve land for the delivery of an inner relief road connecting the R423 at Kilmalogue within the R149 at Cooltederry.

The LAP sets out that the Core Strategy for County Laois is set out under Section 2 of the Laois County Development Plan 2017-2023 and for County Offaly under Chapter 1 of the Offaly County Development Plan 2014-2020.

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 Report, signed by Assistant Planner 27th November 2017 and co-signed by the SEP on 14th December 2017 was prepared for the site.

- Site inspection date noted as 20th February 2017.
- Site Area noted as 1.15ha
- Lands zoned for Residential II
- Report from Roads Design indicates no objection in principle to a residential development on the site.

- Water Services confirmed that there is capacity in the network to accommodate planned growth.
- Assessment indicates that there is a need for housing in Portarlington as provided for on the Laois CDP.
- The subject lands are suitable for the provision of housing.
- The subject lands comprise a vacant site or idle parcel of land and they exceed the 0.05ha threshold required to constitute a site.
- Recommended lands are included in the Vacant Site Register.

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

- This notes that a section 7(1) Proposed Notice of Entry issued on 17th April 2018.
- Report notes a submission was received regarding planning permission and an approved housing body.
- Further to the original planning report dated 14th December 2017 the lands constitute a vacant site.
- Recommends lands be included on the Vacant Site Register and Section 7(3) Notice issues.

5.3 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 individually to Patrick Moore, John Booth, Patrick Booth, Peter Booth, Donal Booth, Marion Booth, Denis Booth, David Hyland, and Peter Conran all of Patricks Court, Patrick Street, Kilkenny.

6.0 The Appeal

6.1. Grounds of Appeal

An appeal was received from John Booth (Partner) who sets out that he wishes to appeal the above entry of the site onto the Vacant Site Register on the basis that the site was sold to Oranage Ease Ltd., 11 Brews Hill, Navan.

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. The Planning Authority's report references a site inspection date 20th February 2017 which is outside the 12 month period preceding the date of entry onto the Register. Furthermore, no photographic evidence to confirm the site was vacant is included with the report.

7.3. If the site was inspected for the purposes of the Vacant Site Levy process on 20th February 2017, 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.

7.4. Further, the lands in question were, at the time of my inspection inaccessible due to the presence of security fencing erected around lands that remain undeveloped as part of the Castlelea housing development. While this may have been the case at time of inspection, it is incumbent on the planning authority to demonstrate that the lands were in fact vacant or idle for the relevant period preceding the date of entry onto the register.

7.5. Notices to relevant Landowners

The documentation submitted from Laois County Council indicate that the Folio 8494 pertains to the lands identified at Cooltederry, in the Barony of Portnahinch and with a postal address of Ballymorris Road, Portarlinton, County Laois. A Section 7(1) Notice of Proposed Entry issued on 17th April 2018 referring to this folio to the eight landowners. Pursuant to this notice, Mr. John Booth on behalf of Pat Moore Partnership indicated in a submission (received by Laois County Council 4th May 2018) that they were presently working with Cluid Housing who were awaiting consent for approval for the site. The submission indicates that once this approval is received the site would be developed as quickly as possible. It was contended, therefore, that the site should be removed from the Vacant Site Register.

While it is noted in the grounds of appeal to the Section 7(3) Notice that the said landowners no longer own the site, I am satisfied based on the documentation submitted that the Section 7(1) Notice of Intention was issued (17th April 2018) to the appropriate landowners at that time. It would appear that the site was sold between the issuing of the Section 7(1) Notice of Intention and the Section 7(3) Notice on 21st

February 2019. However, I do not necessarily consider that the Notices issued are defective in this regard. The Notices in respect of Vacant Sites pertain to the lands in question not the landowners. The notified parties based on their grounds of appeal to the Notice of Intention were the relevant landowners at the time and were aware of the intention of the planning authority to enter the said lands on the register.

7.6. Housing Need

The need for housing is not disputed.

7.7. Suitability for Housing

(a) The Core Strategy

The subject lands are zoned for residential development in the Portarlington Local Area Plan 2018-2024. 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.

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 having regard to the reference to the availability of services in the first planner's assessment dated 27th November 2017 and co-signed 14th December 2017.

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

There does not appear to be anything affecting the physical condition of the land comprising the site which might affect the provision of housing.

7.8. 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.

7.9. **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.

7.10. **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/PG/2016/8B) lands at Cooltederry in the Barony of Portnahinch in the County of Laois and postal address of Ballymorris Road, Portarlinton, County Laois was vacant or idle for the 12 months concerned. 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,

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

5th December 2019