



An
Bord
Pleanála

Inspector's Report ABP-309295-21

Type of Appeal	1. Section 9 Appeal against section 7(3) Notice (MAY-05)
Location	Lands south of Mullen Bridge, Railpark, Maynooth, Co. Kildare.
Planning Authority	Kildare County Council
Planning Authority VSL Reg. Ref.	MAY-05
Site Owner	Frederick Leavy
Planning Authority Decision	Entry on to Vacant Sites Register
Date of Site Visit	19 th August 2021
Inspector	Daire McDevitt

1.0 Introduction

This appeal refers to a Section 7(3) Notice issued by Kildare County Council, stating their intention to enter the lands south of Mullen Bridge, Railpark, Maynooth, Co. Kildare on to the Vacant Sites Register (VSR) in accordance with the provisions of Section 6(2) of the Urban Regeneration and Housing Act 2015.

2.0 Site Location and Description

The site with an area of c.0.07 hectares is located c.0.5km south of Maynooth town centre on southern side of the rail line. The site is located to east of the R406 (Straffan road) and contains a derelict dwelling. The site currently appears to form part of a larger parcel of land (ie original rear garden which is in separate ownership (Ray Leavy) and the subject of ABP 309296-21. There are no boundaries separating the current appeal site and ABP 309296-21. The site is at a lower level than the adjoining R406 and its footpath where a stone wall forms the western boundary. To the north and east are established residential developments and access to the site off Old Rail Park on the southern side of Parklands way. Immediately bounding the site to the east is a Doctors Surgery and houses.

VS-074 included the current appeal and 309296-21 as one site.

3.0 Statutory Context

3.1 Urban Regeneration and Housing Act 2015 (as amended) .

The Notice issued under Section 7(3) of the Act is dated the 18th December 2020 and is accompanied by a map outlining the extent of the site to which the Notice relates.

The Notices do not reference section 5(1)(a) of the Act. I note that the site is located on Residential Lands and section 5(1)(a) criteria was used in the assessment of the site. This matter is not disputed by any parties

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.

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”.

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.”

4.0 Development Plan Policy

4.1 Kildare County Development Plan 2017-2023 (as varied)

The Kildare County Development Plan 2017-2023 is the operative County Development Plan wherein Maynooth is designated as a ‘Large Growth Town II.’

Section 5.7 Regeneration

The Urban Regeneration and Housing Act 2015 aims to incentivise urban regeneration and facilitate increased activity in the housing construction sector. Under the Urban Regeneration and Housing Act 2015, the Planning Authority is required to identify vacant sites that fall within the definition set by the Act, maintain a register of vacant sites and apply a levy in respect of such sites. The sustainable development of vacant sites in Kildare will be promoted through the targeted application of the Urban Regeneration and Housing Act, 2015 (Vacant Site Levy) in towns that are the subject of a statutory Local Area Plan.

In order to enhance the appearance and socio economic performance of the towns, villages and settlements in the county, Kildare County Council will proactively engage with the members of each Municipal District in devising and delivering plans and projects for regeneration. Urban Renewal Plans shall be informed by a Town Centre Health Check and shall incorporate a public realm enhancement plan. Funding at both national and EU Level should be targeted to empower local communities to make a difference at a local level.

Objective EO 22 Promote the sustainable development of vacant residential and regeneration sites in towns that are the subject of a statutory Local Area Plan, through the application of the Urban Regeneration and Housing Act 2015, Vacant Site Levy, on lands zoned for Town Centre, Regeneration and Residential uses.

Maynooth Local Area Plan 2013-2019

The site is in an area zoned 'B: Existing Residential & Infill' which has a zoning objective 'To protect and improve existing residential amenity; to provide for appropriate infill residential development and to provide for new and improved ancillary services'.

5.0 Planning History

PA Ref. 04/1477 refers to a grant of permission to demolish existing single storey cottage and construct a terrace of 3 no. 2 bedroom 2 storey houses. Not commenced.

VS-074 refer to site (0.32ha) includes 3092966-21. No record of Notices issuing.

6.0 Planning Authority Decision

6.1 Register of Vacant Sites Report

A document titled 'Register of Vacant Sites Sheet Survey' site reference VSR-MAY-074 (Old Rail Park, Maynooth, Co. Kildare) include photographs with a date stamp of 18/03/2020 and refers to previous inspection on 23/10/2018. The document itself is however not dated. Following this a Section 7(1) Notice issued on the 8th September 2020.

Report dated 23rd October 2020 refers to 'Consideration of Submissions in response to section 7(1) Notice'. This report refers inspection carried out on the 23rd October 2018 and 18th March 2020 as proof of 12 month vacancy.

A recommendation was made by the Assistant Planner on 23rd October 2020 stating that the site was vacant for at least 12 months prior to the issuing of the section 7(1) Notice and the subject site continues to be vacant and a notice under section 7(3) should be issued to the owner. This was issued on 18th December 2020.

6.2 Planning Authority Notice

Kildare County Council issued Notices on 8th September 2020 to the appellant under section 7(1) of the 2015 Act (as amended) stating that it considered the site to be vacant for the purposes of the act for the following reasons –

- It is zoned for 'Residential' purposes in the Maynooth Local Area Plan 2013-2019.
- The site is situated in an area in which there is a need for housing
- The site is suitable for the provision of housing and,
- The site or the majority of the site is vacant or idle.

Kildare County Council therefore proposes to enter the site onto the Vacant Sites Register.

The Council issued a notice to the appellant under section 7(3) of the 2015 Act on 18th December 2020 informing them that the site had been entered on the Vacant Sites Register.

7.0 The Appeal

Frederick Leavy has lodged an appeal to the Board, against the decision of Kildare County Council to enter the subject site on the Register.

7.1. Grounds of Appeal

The grounds of appeal can be summarised as follows:

- The site is not vacant/idle. Was leased to Kildare County Council until 'recently' for the storage of council equipment associated with road works.
- Appellant is not 'land hoarding', the site was inherited and permission was granted under 04/1477 for 2 houses, not built due to the economic down turn.
- Intends to sell the site in 2021 for the purpose of development.
- The site does not negatively affect the amenity of the area, Its current state add to the amenity by providing a leafy backdrop and mature trees.

7.2. Planning Authority Response

A response was received on the 1st March 2021. Points of note include:

- The site was inspected on two separate occasions, where upon it was noted (on both occasions) that the site was vacant/idle. There was no visual evidence of storage of equipment and the Council has no record of leasing the subject site. The subject site appears to have been vacant/idle for over two years.
- The site is in a neglected condition and there was some evidence at the time of inspections of anti-social behaviour taking place (eg condition of derelict house).

7.3 Further Responses

A response to the Planning Authority's response was received from the appellant on the 31st March 2021 Points of note include:

- Refer to photographs taken at the time of inspection by the Planner in March 2020 and submit that they show the site is well maintained and not in a neglected state.
- There are limited views of the house from outside the site.

- CPO process regarding road improvements created uncertainty regarding the holding, further limited the appellant's ability to develop it.
- Reiterate the grounds of appeal.
- Argue site is going for auction in April 2021 and the entry of the site onto the VSR could dissuade prospective purchasers.
- Reference to the appellant's financial circumstances and reasons for not developing site.

This was circulated to the Planning Authority for comment on the 23rd April 2021. None received.

8.0 Assessment

8.1 Introduction

Kildare County Council issued a Notice under section 7(3) of the Urban Regeneration and Housing Act 2015 (as amended) on the 18th December 2020. The notices issued by the council were not explicit in stating if the site was regarded as residential land under section 5(1)(a), as opposed to regeneration land under section 5(1)(b). The Section 7(1) Notice dated 8th September 2020 notes that the site is zoned for 'residential' purposes in the Maynooth Local Area Plan 2013-2019. It is a reasonable assumption given the zoning, its location and state of the site and all parties' submissions are based on the criteria for a vacant site on residential land set out at section 5(1)(a). The council entered the site on the register on 18th December 2020 so the period to be considered when determining whether the site is vacant and should be on the register is from 19th December 2019 to that date.

Whether the criteria set out in section 5(1)(a) applied during that period is therefore examined below.

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.

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”.

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.

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.

An appeal under section 9 of the Act, requires that the burden of showing that the site or a majority of the site was not vacant or idle 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 vacant or idle 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 on the Kildare County Council VSR on the 18th December 2020.

The main concerns of the appellant is :

- 1) The site is not vacant/idle.
- 2) The Appellant is not 'land hoarding', the site was inherited and permission was granted under 04/1477 for 2 houses, not built due to the economic down turn.
- 3) Intends to sell the site in 2021 for the purpose of development.
- 4) The site does not negatively affect the amenity of the area.

The planning authority do not agree and are satisfied that the lands are zoned for residential use, are vacant/idle and have been for the 12 months prior to the Notices, that there are no infrastructure deficits and there is a need for housing in the area.

As the site is not located on regeneration lands the issue of adverse effect does not arise.

Vacant or Idle

As noted above the notices issued by the council were not explicit that the site was regarded as residential land under section 5(1)(a), as opposed to regeneration land under section 5(1)(b). However this is a reasonable assumption given the location and state of the site and all parties' submission are based on the criteria for a vacant site on residential land set out at section 5(1)(a).

The report (Register on Vacant Site Sheet) of the Assistant Planner refers to an inspection carried out in the 18th March 2020 and one on the 23rd October 2018 and stated that the majority of the site had been vacant/idle for 12 months.

I would refer the Board to section 9(2) of the 2015 Act and while I note a detailed submission has been received on behalf of the appellant, no evidence has been submitted that the site was not vacant site for the duration of the 12 months concerned.

With regard to the use of the land for the storage of equipment The Planning Authority stated that no evidence of storage use was observed in 2018 or 2020. And no record of the Council leasing the land. The appellant has stated that the site was leased to Kildare County Council and until recently used for the storage of council equipment associated with road works in the area. I note that this relates primarily to the rear of the larger holding (no boundaries separating the northern and southern portions) and the site (ABP 309296-21) which is the subject of a separate appeal. I note the statement by the appellant however I refer the Board to section 9(2) of the Act and note that no evidence was submitted to support this. In the absence of such evidence I consider the planning authority's statement acceptable.

8.4 Need for Housing

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.

Section 6 (4) sets out the criteria to determine whether or not there was a need for housing in an area within the Planning Authority's function area.

This has not been disputed by either the Appellant or the Planning Authority , therefore I do not intend to address this matter.

8.5 Suitable for Housing

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.

This has not been disputed by either the Appellant or the Planning Authority, therefore I do not intend to address this matter.

8.5.1 Core Strategy

This has not been disputed by the Appellant, therefore I do not intend to address this matter.

8.5.2 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

This has not been raised by either the Appellant or the Planning Authority.

In terms of the need for housing in the area and the suitability of the site for housing I am satisfied that all the tests required by section 6(4) and (5) are met. The site is and has been for some time suitable for housing and satisfies a housing need recognised by the planning authority.

The site is located within the built up area of Maynooth and has direct access to the existing road network which serves housing and commercial premises there, as is apparent from an inspection of the site and current maps. The existing road network is adequate to support housing on the site.

The appellant has referred to the planning history of the site and economic reasons for not developing the site to date. There are no extant permission on the site.

Furthermore, in the matter of a current planning application or indeed an extant planning permission for the site, the Act is clear; the test for inclusion is the past

condition of the site from the date of entry on the Register. I refer to Circular Letter PL7/2016, Appendix 3, that states: “where a vacant site has an extant planning permission associated with it, this should not be a consideration in determining whether to apply the levy.” The appellant’s case that the site is not vacant or idle because of the intention to implement a planning permission cannot be considered as meaningful use for the site so as to remove it from the register. Works commenced after the appellant lodged their appeal under section 9 of the Act.

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

No factors have been identified that would affect the physical condition of the land which might affect the provision of housing.

9.0 Conclusion

I am satisfied that the site meets the definition of residential lands contained in section 3, meets the definition of vacant or idle contained in section 5 (1)(a)(i),(ii) and (iii) of the Urban Regeneration and Housing Act 2015 as amended by section 63 of the Planning and Development Amendment Act 2018. And the criteria set out in section 6(4) to determine whether or not there was a need for housing in an area within the Planning Authority’s function area. Having regard to the tests contained in section 6(5) of the Act to determine the suitability of a site for housing having regard to (a) the core strategy and (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.

10.0 Recommendation

I recommend that in accordance with section 9(5) of the Urban Regeneration and Housing Act 2015, the Board should confirm the Notice stating that the site (MAY-05) at lands south of Mullen Bridge, Railpark, Maynooth, Co Kildare. was a vacant site for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 18th December 2020 shall remain.

11.0 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 appellants,
- (c) The report of the Planning Inspector,
- (d) the site is on residential lands,
- (e) There is a need for housing in the area,
- (f) the site is suitable for the provision of housing by reference to the provision of public infrastructure and facilities (within the meaning of section 48 of the Planning and Development Act, 2000, as amended) necessary to enable housing to be provided and serviced.

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

Dáire McDevitt
Senior Planning Inspector

13th February 2022