

Local Authority Vesting Orders

1. Registration of Local Authorities as owners of Derelict Sites
2. Registration of Sanitary Authorities under the Local Government (Sanitary Services) Act 1964
3. Registration on foot of orders made under section 45(5) of the Planning and Development Act 2000 – Provision of Open Spaces

Specimen Order

1. Registration of Local Authorities as owners of Derelict Sites

1.1 General

The Derelict Sites Act, 1990, provides that a Local Authority may acquire by agreement or compulsorily any Derelict Site situate in its functional area.

1.2 Compulsory Acquisition

On lodgement of the original Vesting Order made under section 17 of the said Act, a map of the site and the appropriate fees, the Local Authority shall be registered as full owner thereof. The date of registration is to be the date of vesting. If the date of vesting is not twenty one [21] days or more later than the date of the execution of the order, the order is not to be accepted for registration.

If a Vesting Order is lodged prior to the date on which it vests, the registration is not to be effected or settled until after the date of vesting. Subject (in the case of registered land) to notice in Form 28 on the owners of burdens, the registration of the Local Authority as full owner is to be effected free from equities and all other burdens except the Land Purchase Annuity or other annual sum payable to the Minister for Agriculture, Food and the Marine or Commissioners of Public Works.

If the acquisition is of all or part of a registered holding subject to an annual sum payable to the Minister for Agriculture, Food and the Marine or Commissioners of Public Works in Ireland, notice is to be served on the body to which the sum is payable. On the registration of an acquisition of unregistered land, a memorial is to be filed in the Registry of Deeds.

1.3 Acquisition by Agreement under the 1961 Act

The Divisional Manager shall be responsible for the registration of all acquisitions by agreement under this Act. It is to be noted that when one Local Authority transfers property acquired under this Act to another Local Authority under section 13 (3) of the Derelict Sites Act 1961 the property remains subject to the restrictions under section 13 of that Act.

1.4 Forms of Registration

A separate folio for each Derelict site acquired is to be opened.

Part 2 is to contain the standard Devolution Note (if applicable) together with the particular ownership.

Entry No. 1 Part 3 shall be in the following form:-

“The property herein is subject to any purchase annuity payment in lieu of rent or other annual sum or portion thereof which may be payable under section 18(3) of The Derelict Sites Act, 1990”

Note this entry may be omitted if evidence from the Minister for Agriculture, Food and the Marine and the Commissioners of Public Works in Ireland is provided indicating that there are no such payments or annuities payable any longer. Such evidence or confirmation may be accepted in applications to cancel existing entries.

Part 3 is to contain at Entry No. 2 an entry of the restrictions under the Act in the following form:

“The property is subject to the restrictions against alienation or letting as may be contained in Regulations made pursuant to section 20 of the Derelict Sites Act, 1990”.

1.5 Repeal of the Derelict Sites Act, 1961

The Act of 1990 repeals the Derelict Sites Act, 1961, other than saving the exercise of certain powers or accrual of any rights in respect of anything commenced before the coming into operation of the 1990 Derelict Sites Act. The Act of 1990 makes no provision for property acquired under the Act of 1961. [The 1961 Act was similar in respect of the previous Acquisition of Derelict Sites Act, 1940 which the 1961 Act repealed.] It would appear that such property is no longer subject to the restrictive note under the 1940 Act but that it is subject to the restrictions contained in section 83 of The Local Government Act, 1946 [as amended]. On the completion of any application or dealing on such folio, the settling officer shall enter the following restriction note on Part 3:

“The property herein having been acquired by the registered owner thereof for the statutory purposes is subject to such restrictions against alienation or letting as may be contained in the Statutory Enactments relating to such property.”

The restriction note under the aforementioned 1940 Act should be cancelled.

2. Registration of Sanitary Authorities under the Local Government (Sanitary Services) Act 1964

2.1 General

The Local Government (Sanitary Services) Act, 1964, provides by section 6 that a sanitary authority may acquire by agreement or compulsorily any plot of land situate in its sanitary district that is a dangerous place or that has ceased, by reason of the carrying out of works under the Act by the authority, to be a dangerous place.

2.2 Compulsory Acquisition

On lodgement of the original Vesting Order made under section 10 of the said Act, a map of the plot and the appropriate fee, the Sanitary Authority shall be registered as full owner. The date of registration is to be the date on which the draft entry or folio is settled in unregistered land and the date of lodgement of the Vesting Order in registered land subject as hereunder.

If the date of vesting is not seven days or more later than the date of the execution of the Order, the order is not to be accepted for registration. If a Vesting Order is lodged prior to the date on which it vest, the registration is not to be effected or folio settled until after the date of vesting. Subject in the case of registered land to notice in Form 28 on the owners of burdens, the registration of the Sanitary Authority as full owner is to be effected free from equities and all other burdens except the Land Purchase Annuity or other annual sum payable to the Minister for Agriculture, Food and the Marine or Commissioners of Public Works.

If the acquisition is of all or part of a registered holding subject to an annual sum payable to the Minister for Agriculture, Food and the Marine or Commissioners of Public Works in Ireland. notice is to be served on the body to which the sum is payable. On the registration of an acquisition of unregistered land, a memorial is to be filed in the Registry of Deeds.

2.3 Acquisition by Agreement

The Divisional Manager shall be responsible for the registration of all acquisitions by agreement under this Act. The Dealing Section shall pass such dealings when set up to the Divisional Manager for consideration.

2.4 Forms of Registration under 1964 Act

A separate folio for each property acquired is to be opened.

Part 2 is to contain the standard Devolution Note [if applicable].

Entry No. 1 Part 3 shall be in the following form:-

“The property herein is subject to any purchase annuity, payment in lieu of rent or other annual sum or portion thereof which may be payable under section 10(2) of the Local Government (Sanitary Services) Act, 1964”.

Part 3 is to contain at Entry No. 2 an entry of the restrictions under section 13 of the 1964 Act in the following form:-

“The property is subject to the restrictions against alienation or letting as contained in section 13 of the Local Government (Sanitary Services) Act, 1964”.

2.5 Use of land acquired under 1964 Act

It is to be noted that when one Sanitary Authority transfers property acquired under this Act to another Sanitary Authority under section 13(3) the transfer may be effected by means of an Order (which does not require stamping) and the property remains subject to the restrictions under section 13.

3. Registration on foot of orders made under section 45(5) of the Planning and Development Act 2000 – Provision of Open Spaces

3.1 General

Where development has been carried out on lands pursuant to a permission given under section 34 of the Planning and Development Act 2000, to which a condition either explicit or implicit was attached requiring the provision or maintenance of land as open space, the Planning Authority is empowered to make provision for such an open space under section 45 of the Planning and Development Act 2000. Where the owner fails to comply with a written request to provide the open space, within a specified period of not less than 8 weeks of such written request being made by the Planning Authority, the Planning Authority may publish an acquisition notice and serve same on the owner who can appeal to the An Bórd Pleanála.

On failure of such appeal or in absence of such appeal, the Planning Authority is empowered to make an Order in the prescribed form under section 45(5) of the Act vesting the land to which the acquisition notice relates in the Planning Authority for all the estate term or interest for which the lands were held by the owner before the date of the Order together with all rights and liabilities as were enjoyed or incurred in connection with same, together with an obligation to comply with the request made under section 45(1)(c) of the Planning and Development Act 2000. In this way the Planning Authority having acquired the land for open space then honours the developer's obligations in relation to same.

Section 45 of the 2000 Act commenced on the 1st March 2002 by the virtue of the Planning and Development Act 2000 (Commencement)(No. 3) Order (S.I. No. 599 of 2001). The Local Government (Planning and Development) Act 1976, which contained similar provisions, was repealed by the 2000 Act. The S.I. No. 226 of 1976 set out the regulations and

forms prescribed under the equivalent provisions of the Local Government (Planning Development) Act 1976. In so far as these have not been repealed or revoked, they continue in force, as if made under the 2000 Act, by virtue of the Interpretation Acts.

3.2 Practice on Registration

On lodgement of a Vesting Order in the prescribed form made pursuant to section 45(5) of the above Act, together with map referred to in said Order, together with evidence of title to the property acquired, if in order, the Planning Authority in whom the lands are vested should be registered as owner of the property whether freehold or leasehold, as the case may be, in accordance with the Order and the title furnished. See Specimen Order below.

If title to the property is not shown, the dealing should be rejected. Registration of the Planning Authority as such is compulsory as to any land affected whether registered or unregistered pursuant to section 23 of the Registration of Title Act, 1964 as amended.

Registration of the Planning Authority should be made subject to all burdens charges or incumbrances as affect such lands as are registered lands and also subject to such other burdens charges or incumbrances as are specified in the Order (Section 45(6)) including any purchase annuity, payment in lieu of rent or other annual sum payable to the Minister for Agriculture, Food and the Marine or the Commissioners of Public Works, or such sum as may be apportioned on the lands acquired. See section 45(6) of the Act.

A note that the devolution of the property is subject to Part II of the Succession Act, 1965, in so far as the lands are freehold lands.

The following note should be entered on Part 3 of the folio:-

“The property is subject to any annuity or annual sum which may be payable in respect of the property whether alone or in conjunction with other property to the Minister for Agriculture, Food and the Marine or Commissioners of Public Works in Ireland as the case may be.”

A separate note on Part 3 should also be entered as follows:-

“The property is subject to the provisions of section 45 of the Planning Act 2000 relating to the enforcement of planning control (open spaces).”

While no stamp duty is payable on such Orders the appropriate Land Registry fee is payable.

Notice should be served on the Minister for Agriculture, Food and the Marine or Commissioners of Public Works of lodgement of the Order and registration should proceed without waiting for reply.

A memorial should be filed in the Registry of Deeds in respect of unregistered land.

Date of registration should be the date specified in the Vesting Order.

Where the lands are unregistered, the Examiners Cross Functional Team should be consulted before proceeding with the dealing.

Registration of the Planning Authority is to be made in accordance with the Order (Section 45(5)) and title furnished.

The practice in relation to registered land above described will apply *mutatis mutandis* to first registration of such properties.

Property Registration Authority

1st December 2009

Amended 7th January 2014

Specimen Order

ORDER under section 45 of the Planning and Development Act, 2000

VESTING LAND

WHEREAS development has been carried out pursuant to a permission under section 34 of the Planning and Development Act, 2000 (hereinafter called the “Act”), [References];

AND WHEREAS a condition requiring the provision or maintenance of land as open space, being open space to which section 45 of the Act applies, was attached to the permission;

AND WHEREAS it was implicit in the application for the permission that land would be provided or maintained as open space, being open space to which section 45 of the Act applies;

AND WHEREAS on the [date of service], [Name] County Council (hereinafter referred to as “the Planning Authority”) served on the owner of the land a written request dated the [date of request], that within a period of eight weeks commencing on that day he would provide, level, plant or otherwise adapt or maintain the said land in a manner specified in the request, being a manner which in the opinion of the Planning Authority would make it suitable for the purpose for which the open space was to be provided;

AND WHEREAS the owner has failed to comply or to secure compliance with such request within such period;

AND WHEREAS the Planning Authority have, in accordance with section 45(1) of the Act, published an acquisition notice in relation to the said land and have, in accordance with section 45(3) of the Act and the said acquisition notice has been confirmed in relation to the land described in the schedule herein;

NOW THEREFORE the Planning Authority, in exercise of the powers conferred on them by section 45(5) of the Act hereby order that the said acquisition notice as confirmed relates, and which is shown on the map attached hereto which said map has been marked and sealed with the official seal of the Planning Authority shall, on the [date of vesting], vest in the Planning Authority for all the estate, term or interest for which immediately before the date of this order the said land was held by the owner together with all rights and liabilities which, immediately before the said date, were enjoyed or incurred in connection therewith by the owner together with an obligation to comply with the request made under section 45(1)(c) of the Act.

SCHEDULE

Description of land

All that part of the land of etc.

PRESENT when the Common Seal of [NAME] COUNTY COUNCIL
was hereunto affixed:

Chairman/Nominated Member

Senior Executive Officer [or other authorised officer]

Map referred to in Order made under section 45 of the Planning and Development Act, 2000

Chairman/Nominated Member

Senior Executive Officer [or other authorised officer]