



An
Bord
Pleanála

Inspector's Report ABP-303442-19

Type of Appeal	Section 9 Appeal against Section 7(3) Notice
Location	Lands at Barrow Track, Co. Carlow
Planning Authority	Carlow County Council
Planning Authority VSL Reg. Ref.	VS-18-22
Site Owner	Lispopple SPV Ltd.
Planning Authority Decision	Place on Register
Date of Site Visit	17th March 2020
Inspector	Erika Casey

1.0 Introduction

- 1.1. This appeal refers to a Section 7(3) Notice issued by Carlow County Council, stating their intention to enter a site referred to as lands at Barrow Track, Co. Carlow 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)(b) of the URH Act 2015.
- 1.2. The appeal site registered under VSL reference VS-18-22, has one registered owner: Lispopple SPV Ltd. Notice was issued to both company directors – Sean McGreevy and Gerry McGreevy.

2.0 Site Location and Description

- 2.1 The subject site has an area of 2.9 ha. It is located in Carlow Town. The western boundary of the site abuts the Barrow Track and River Barrow. To the north, is existing housing along Andy Murphy Road. To the east, are the offices of Carlow County Council and other commercial and retail development. Cox's Lane adjoins the southern boundary. The site is undeveloped. There is evidence of hardstanding, littering and dumping on the site. There is a small area of hard standing at the north east corner 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 PA is of the opinion that the site referenced is a vacant site within the meaning of Section 5(1)(b) of the Act. The Notice is dated 6th December 2018.
- 3.1.2. Prior to this, a Notice of Proposed Entry was issued to the landowner on the 28th of September 2018. This was accompanied by a Planning Report and map outlining the extent of the site to which the Notice relates.

3.1.3. Section 5(1)(b) of the Act states that a site is a vacant site if, in the case of a site consisting of 'regeneration' land:-

- (i) The site, or the majority of the site, is vacant or idle, and
- (ii) The site being vacant or idle has adverse effects on existing amenities or reduces the amenity provided by existing public infrastructure and facilities (within the meaning of Section 48 of the Act 2000) in the area in which the site is situated or has adverse effects on the character of the area.

3.1.4 With regard to adverse effects, Section 6(6) of the Act sets out a number of criteria including:

- (a) land or structure in the area were, or are, in a ruinous or neglected condition;
- (b) antisocial behaviour was or is taking place in the area;
- (c) there has been a reduction in the number of habitable houses, or the number of people living in the area;
- (d) and whether or not these matters were affected by the existence of such vacant or idle land.

3.1.5 The Act defines "regeneration land" at Section 3 as follows:

"regeneration land means land identified by a Planning Authority in its development plan or local area plan, after the coming onto operation of section 28, in accordance with section 10(2)(h) of the Act of 2000 with the objective of development and renewal of areas in need of regeneration, and includes any structure on such land."

3.2. **Development Plan Policy**

Joint Spatial Plan for the Greater Carlow Graiguecullen Urban Area 2012-2018 and Carlow Town Development Plan 2012-2018 (extended)

3.2.1 The site is located on lands zoned 'Town Centre' in the Joint Spatial Plan for the Greater Carlow Graiguecullen Urban Area 2012-2018 which incorporates the Carlow Town Plan. The objective of this zoning is to *"protect the vitality and vibrancy of the town centre and to provide for town centre activities"*. It is also identified as an Opportunity Site in the Joint Spatial Plan for the Greater Carlow Graiguecullen Urban Area 2012-2018.

3.2.2 Objective C03 states:

“To present a schedule of landbanks within the Greater Urban Area which offer particular opportunities and are of strategic importance for the future development of the Greater Carlow Graiguecullen Urban Area”.

3.2.3 Objective CT04 states:

“Promote the development of the River Quarter and Riverside Regeneration.”

3.2.4 CT05 states:

“Encourage specific urban renewal projects and advance opportunity sites”.

3.2.5 Policy CTP22 seeks to:

“Promote the development of opportunity sites within the River Quarter, subject to appropriate assessment, flood risk consideration as well as other general planning considerations.”

3.2.6 Policy CTP30 seeks:

“Support the principle of redeveloping.... Barrow Track Site (Opportunity Site 2).”

3.2.7 The Barrow Track Opportunity Site is described as follows:

- Greenfield site with little vegetation/part public car park.
- Suitable for mixed use development, retail commercial and residential.
- Carpark site identified for decentralisation of Government Department.
- Adjacent to Natura 2000 Site: cSAC 002162.
- No known contamination issues.
- Serviced by new roads: Montgomery Street, Cox’s Lane; served by Barrow Track.
- Opportunity for well designed scheme that addresses the River Barrow and takes advantage of open aspect.
- Flood Zone A relates to site.

3.2.8 The Carlow County Development 2015-2021 was varied (Variation No. 1(a) in May 2017 to incorporate the provisions of the Urban Regeneration and Housing Act 2015 with ED-Policy 22 stating: *“it is Council policy to utilise all available tools and mechanisms including the VSL in order to facilitate and encourage appropriate*

development of vacant sites on lands designated as ‘regeneration areas’ in the relevant statutory land use plans.”

Variation No. 3 Joint Spatial Plan for the Greater Carlow Graiguecullen Urban Area 2012-2018

3.2.9 There was a further variation to the Joint Spatial Plan (variation no. 3) adopted the 10th of February 2020. This included a number of amendments to the plan relating to the vacant site levy including:

“CO 16 Vacant Sites

It is an objective of this plan to encourage and promote the appropriate development and renewal of areas that are in need of regeneration, identified having regard to the core strategy, in order to prevent:

- *Adverse effects on existing amenities in such areas, in particular as a result of the ruinous or neglected condition of any land*
- *Urban blight or decay*
- *Anti-social behaviour, or*
- *A shortage of habitable houses or of land suitable for residential use or a mixture of residential and other uses.”*

“HOUS P 16

“To implement the vacant site levy for vacant development sites, as appropriate and to promote residential development through active land management and a co-ordinated planned approach to developing appropriately zoned lands at key locations, including regeneration areas, vacant sites and under-utilised areas.”

“Vacant Site Levy- Residential and Regeneration Lands

The Urban Regeneration and Housing Act 2015 introduced a mechanism for the application of a vacant site levy in order to incentivise the development of vacant sites in urban areas for housing and regeneration purposes. The application of the levy is intended to bring underutilised and vacant sites and buildings in urban areas into beneficial use, while also ensuring a more effective return on State investment in enabling infrastructure and helping to counter unsustainable urban sprawl. Part of the development and regeneration strategy of this plan is to engage in active land management of vacant sites where appropriate.

The Urban Regeneration and Housing Act 2015 sets out two broad categories of vacant land that the levy may apply to:

- *Lands zoned primarily for residential purposes*
- *Lands in need of regeneration*

The following lands zoned for residential or primarily residential purposes are included for the purposes as set out in the Urban Regeneration and Housing Act 2015 in relation to the vacant land levy:

- *Objective Residential 1 and Residential 2 zoned lands as they have the capacity to provide for residential accommodation.*

The following zoned lands are included as lands with the objective of development and renewal of areas in need of regeneration:

- ***Objective Town Centre, District Centre, Neighbourhood Centre, Community Educational and Institutional, Industrial, Enterprise and Employment, Innovation and Business.***” (my emphasis)

4.0 **Planning History**

Application Reference 01/3970

- 4.1 Permission granted for a mixed use development comprising 12 no. blocks to accommodate apartments, enterprise units, hotel and retail units.

Application Reference 03/5230

- 4.2 Permission granted for the construction of 28 no. 2 bed apartments and associated site works.

Application Reference 04/5440

- 4.3 Permission granted for a mixed use commercial and residential development of 75 apartments, restaurant and associated kitchen and stores.

Application Reference 04/5470

4.4 Permission granted for anchor store, retail space divided over 20 units, offices, hotel with ancillary leisure facilities, apartments and underground parking spaces. This permission was extended under application reference 10/6326 and under 12/6499.

5.0 Planning Authority Decision

5.1. Planning Authority Reports

5.1.1 A Vacant Site Report (20.08.2018) was prepared for the site outlining the dates of the visits 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 Regeneration. The following key points are noted:

- Site visits were undertaken on the 24.04.2018, 29.05.2018 and 17.08.2018.
- The site comprises a large and visually prominent tract of land with significant frontage along the Barrow Track. The underutilised, vacant and neglected appearance of the site seriously detracts from the river corridor area of the town.
- Area Engineer notes no constraints which may affect the development of the site.
- IW (14.05.2018) confirm that the site is serviced by water infrastructure and facilities to enable development. No known physical issues which may affect development.

5.1.2 In terms of criteria set out in section 5(1) (b) it is detailed that:

- The site is vacant and idle.
- The site is identified as an 'Opportunity Site in the Joint Spatial Plan for the Greater Carlow Graiguecullen Urban Area 2012-2018. The policies, objectives and related provisions in the Plan seek to encourage and advance the renewal and redevelopment of key opportunity sites.
- The underutilised, vacant and neglected appearance of the site has adverse effects on the character of the river corridor area. Views of the site present a

combination of old areas of hardstanding/building floor slabs, overgrown sections, overgrown stockpiles of soil, illegal dumping and littering.

The report is accompanied by a number of Google street view images of the site from different years and site photographs indicating evidence of dumping and litter.

5.1.3 A further Planning Report (08.11.2018) was prepared in response to a submission received opposing the proposed entry onto the VSL register. This noted:

- Contrary to the submission made, the car parking area in use by the Council does not occupy a significant portion of the site.
- Note that irrespective of the fact that it is proposed to lodge an application for planning permission, Circular PL7/2017 is clear that 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 site is vacant. Further site visit undertaken on the 2.11.2018 confirming condition of site and that it has an adverse effect on the character of the area.
- 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 Simon Clear and Associates on the 10th of January 2019 on behalf of the land owners which can be summarised as follows:

- The lands were subject to planning permission for comprehensive development. The owners have facilitated the Council and the OPW in carrying out the Barrow Flood Defence Scheme.
- Owners are investigating a new masterplan for the lands.
- The subject lands form part of an extensive area zoned Town Centre. It is evident that the Development Plan does not identify the entire town centre zone as an area in need of regeneration. Regeneration is not mentioned in the detailed description of the zoning objective.

- The zoning objective of the site does not support the contention that the site has been identified by the Planning Authority as ‘regeneration land’. Refers to Circular letter PL7/2016 and that Planning Authorities should provide for the development of vacant sites in designated areas (“residential land” and or “regeneration land”) as an explicit objective in their development plan or local area plans.
- A new plan or plan variation was not taken by the Planning Authority and the Barrow track lands are not explicitly identified as regeneration lands in a statutory development plan.
- The Statutory Development Plan describes the site as ‘greenfield’. In principle, a greenfield site cannot be regenerated.
- The lands is not in ruinous or neglected condition.
- There is no evidence of anti-social behaviour.
- Between 2001 and 2016, the population within the 2 immediate SAPS area increased from 277 to 320 persons (+15.5%), housing stock increased from 201 to 213, while vacant units decreased from 68 to 36.
- The site does not have an adverse effect on existing amenities or reduce the amenity provided by existing public infrastructure or have an adverse effect on the character of the area.

6.2. Planning Authority Response

6.2.1 No further comment.

7.0 Assessment

7.1. Introduction

7.1.1. This Notice has been issued under the provisions of Section 5(1)(b) of the Act which relates to ‘regeneration lands’.

7.1.2. Section 5(1)(b) of the Act states that a site is a vacant site if, in the case of a site

consisting of 'regeneration' land:-

- (iii) The site, or the majority of the site, is vacant or idle, and
- (iv) The site being vacant or idle has adverse effects on existing amenities or reduces the amenity provided by existing public infrastructure and facilities (within the meaning of Section 48 of the Act 2000) in the area in which the site is situated or has adverse effects on the character of the area.

7.1.3 The site must meet both tests and I will address each further below but prior to addressing same, I consider it necessary to address a number of matters of process.

Development Plan

7.1.4 The main issue raised by the appellant is that procedurally the subject lands have not been explicitly identified as regeneration lands in a statutory development plan.

7.1.5 The notice issued in respect of the subject site was issued under the provisions of Section 5(1)(b) of the Act which refers to regeneration land. The notice was issued on the 6th of December 2018. Section 3 of the Urban Regeneration and Housing Act 2015 defines regeneration land as meaning land identified by a Planning Authority in its development plan or local area plan, after the coming into operation of section 28, in accordance with section 10(2)(h) of the Act of 2000 with the objective of development and renewal of areas in need of regeneration, and includes any structures on such land. Therefore, the Act amended Section 10(2) of the 2000 Act (as itself amended), adding regeneration as an objective, and requiring Development Plans and Local Area Plans to include this provision in the identification of such objectives in their Plans or vary existing Plans to incorporate same.

7.1.6 The current Plan for Carlow is the Joint Spatial Plan for the Greater Carlow Graiguecullen Urban Area 2012-2018 which incorporates the Carlow Town Development Plan 2012-2018 (as extended). The site is included as an opportunity site. At the time the notice was issued, it appears that there was no provision in the Plan or variation to same which identified the site for regeneration. Whilst there was a variation to the County Plan in 2017, this just related to a generalised policy to utilise all available tools and mechanisms to encourage the development of vacant sites.

7.1.7 As detailed above in section 3, the Joint Spatial Plan was varied in February 2020 in relation the vacant site levy. The variation explicitly states "*The following zoned lands*

are included as lands with the objective of development and renewal of areas in need of regeneration:

- *Objective Town Centre, District Centre, Neighbourhood Centre, Community Educational and Institutional, Industrial, Enterprise and Employment, Innovation and Business.”*

7.1.8 However, at the time the Notice was issued, this policy provision was not in place and the subject lands at that time, were not identified as regeneration lands for the purposes of the vacant site levy. The site was not at that time identified for regeneration purposes as per Section 10(2)(h) of the Act as amended. For this reason, I consider that the entry should be cancelled.

12 Month Period

7.1.9 The 2015 Act (as amended) requires the Board on appeal to look at the past condition of the site and determine if the site was vacant or idle, section 9 states.

(2) On an appeal under this section the burden of showing that the site was not a vacant site for the duration of the 12 months concerned is on the owner of the site.

(3) Where the Board determines that a site was not a vacant site 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 in accordance with section 6 (2) it shall give written notice to the planning authority who shall cancel the entry on the register in respect of that site.

7.1.10 The relevant time period for this appeal extends 12 months back from the date on which the site was entered on the register, in this instance, the 6th of December 2018. I note that the Planning Authority have stated that the site has been vacant for the duration of 12 months. The Vacant Site Report notes that 3 site visits were undertaken on the 24.04.2018, 29.05.2018 and 17.08.2018. The second Vacant Site Report notes a further visit was undertaken on the 2nd of November 2018. All of these visits were less than 12 months before the entry was made.

7.1.11 The Planning Authority have also utilised Google Street view imagery as further evidence that the site is a vacant site. As Google Street View is undertaken by a third party, I am of the view that it cannot be relied on for the purposes of confirming that the site is a vacant site.

7.1.12 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, that the site was vacant and idle on the 5th of December 2017 which would comprise the commencement of the 12-month period.

7.1.13. The relevant time period is a very important factor and one upon which the 2015 Act is quite clear in its interpretation, section 6(2) states as follows:

“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.”

7.1.14 The Planning Authority should provide a clear chronological record to confirm site visits and provide a definitive assessment of the duration of twelve months, i.e. when the site was first visited and when most recently visited in relation to placement on the register. In this instance, the Planning Authority have not fully accounted for the duration of the twelve month period and the site visits were undertaken less than 12 months prior to the entry of the site on the register.

7.1.15 From my observations of the site and the details from the planning history of the adjoining site, it is highly probable that the site has been in the same or similar condition for some time. In this regard, it is most likely that the lands have been and continue to be vacant. However, it is not clear from the information presented by the Planning Authority that the relevant time period has elapsed. 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.

7.1.16 Even though it is likely and probable that the lands have been vacant, in the absence of adequate documentary evidence, this is not certain. I, therefore, recommend that the Notice issued should be cancelled and the site should be removed from the register. This does not preclude the Planning Authority from recommencing the process and implementing the 2015 Act in terms of allowing the relevant 12 month time period to elapse.

7.1.17 While it is my opinion that the Notice should be cancelled for the procedural reasons outlined above, I will provide my opinion below in respect of the site in relation to the matters arising in Section 5(1)(b).

(a) land or structure in the area were, or are, in a ruinous or neglected condition

7.1.18 The subject site is a large prominent site in the town centre of Carlow. It has significant frontage along the Barrow Track. There are no structures on the site that could be considered ruinous. As highlighted by the Planning Authority, the overall lands have a neglected appearance. During the site visit, it was evident that the site is overgrown and has an unkempt appearance. There are areas of hardstanding, stockpiles of soil and overgrown vegetation and builders waste

7.1.19 In conclusion, I am satisfied that the vacant and neglected condition of these vacant lands has an adverse effect on existing amenities and reduces the amenity provided by existing public infrastructure and facilities (within the meaning of Section 48 of the Act 2000) in the area in which the site is situated, particularly due to the strategic location of the lands in proximity to the town centre and other physical and social infrastructure. The site has an adverse effect on the character of the area.

Antisocial behaviour was or is taking place in the area

7.1.20 It is detailed in the Planner's Report accompanying the Notice of Proposed Entry to the Vacant Site Register that there is evidence of antisocial behaviour on the site with evidence of dumping and litter.

7.1.21 At the time of the site visit, it was noted that there is clear evidence of anti-social behaviour taking place on the subject site. There was clear evidence of litter and dumping – see photographic report. I am satisfied that there is clear evidence of antisocial behaviour taking place on the site and in the general area and that the neglected and vacant condition of the subject lands contribute to this.

There has been a reduction in the number of habitable houses, or the number of people living in the area

7.1.22 There is no evidence to suggest that as a result of the vacant site that there has been a reduction in the number of habitable houses, or the number of people living in the area.

7.1.23 In conclusion, I consider that 2 of the tests in Section 6(6) are met and that site has an adverse effect on existing amenities and has been subject to anti-social behaviour and thus can be categorised as a vacant site as defined by Section

5(1)(b). However, given my concerns regarding the process undertaken as outlined in Section 7.2 above, these matters are secondary to the procedural matters arising in this instance.

Other Matters

7.1.24 The appellant also refers to the planning history of the site as well as intentions to prepare a masterplan for the lands. In the matter of 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.”*

8.0 Recommendation

8.1 I recommend that in accordance with section 9(5) of the Urban Regeneration and Housing Act 2015, the Board should cancel that the site at Barrow Track, Carlow was vacant or idle for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 6th of December 2018 shall be cancelled.

9.0 Reasons and Considerations

9.1 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, and

(e) the Board is not satisfied that the site was specifically identified for regeneration as required by the definition of “regeneration land” as set out in Section 3 of the Urban Regeneration and Housing Act 2015, as amended, which states that regeneration land identified by a Planning Authority in its development plan or local area plan, after the coming into operation of section 28, in accordance with section

10(2)(h) of the Planning and Development Act, 2000 as amended, with the objective of development and renewal of areas in need of regeneration, and includes any structures on such land at the time the Notice was issued.

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.

Erika Casey
Senior Planning Inspector

19th March 2020