



An  
Bord  
Pleanála

## Inspector's Report ABP-300550-18

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<b>Type of Appeal</b>	Section 9 Appeal against section 7(3) Notice
<b>Location</b>	Lands at Castle Street, Bray, Co. Wicklow
<b>Planning Authority</b>	Wicklow County Council.
<b>Planning Authority VSL Reg. Ref.</b>	VS/B/04
<b>Site Owner</b>	Beralt Ltd.
<b>Date of Site Visit</b>	12 April 2018
<b>Inspector</b>	Una Crosse

## 1.0 Introduction

- 1.1. This appeal refers to a section 7(3) notice issued by Wicklow County Council, stating their intention to enter the site at Lands at Castle Street, Bray, Co. Wicklow 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 comprises a series of warehouse structures both within and addressing the street. The site also adjoins a cul-de-sac in Dwyer Park. The site is bounded by a high palisade fence. The site is adjoined by a range of buildings and uses from commercial to residential.

## 3.0 Planning Authority Decision

### 3.1. Planning Authority Notice

Planning Authority Notice: Wicklow County Council advised the site owner that the subject site (Planning Authority site ref. **VS/B/04**) had been identified as a vacant site. The notice, issued pursuant to section 6 of the Act and dated 1<sup>st</sup> December 2017, stated that the particulars of the site have been entered on the Vacant Sites Register. The notice was accompanied by a map outlining the site boundary. It is also noted that the notice was served on 5 parties including the Secretary and Directors of Beralt Developments Ltd.

### 3.2. Register of Vacant Sites Report

A report prepared by the Planning Authority, entitled 'Phase 1 - Vacant Site Levy Investigations' in relation to the site which is presented in tabular format is summarised as follows:

- Site is made up of a number of disused industrial/warehouse type units and a large concrete yard.
- Site is noted as being zoned town centre, with the type referred to as regeneration;
- It is stated that the site has been vacant for 12 months and does not form part of a persons home nor is it subject to a derelict sites levy;
- In relation to adverse effects on existing amenities it is stated:
  - Sites is located on a key commercial and shopping street in the town centre and at a prominent and highly visible location on the main access route into the town from the north.
  - The site is boarded up and neglected;
  - Its condition and vacancy degrades the overall appearance and vitality of the area and is likely to attract anti-social behaviour;
- I would also note the response of the PA to the submission received from the owner prior to the issuing of the notice which acknowledges the intention of the owner to develop but refers to the definition of regeneration in Section 3 of the Act. Reference is also made to Objective HD19 of the CDP relating to the application of the Levy.

## 4.0 Development Plan Policy

### 4.1. Wicklow County Development Plan 2016-2022

The current County Development Plan refers to Urban Regeneration and Housing in Chapter 4 of the Plan and specifically at Policy HD19 where it states:

*In many settlements in the County, there are sites and areas in need of development and renewal, in order to prevent:*

- a. adverse effects on existing amenities in such areas, in particular as a result of the ruinous or neglected condition of any land,*
- b. urban blight and decay,*
- c. anti-social behaviour, or*

*d. a shortage of habitable houses or of land suitable for residential use or a mixture of residential and other uses*

*It is an objective of this plan to encourage and facilitate the appropriate development of such sites /lands and all available tools and mechanisms, including the Vacant Site levy, may be utilised to stimulate such development.*

*In this regard, it is considered that all lands zoned 'Town Centre' in this plan (this refers to Level 5 settlements) as well as the following zones in larger towns (with standalone plans) may include sites that are in need of renewal and regeneration, and these areas will be examined in detail to determine if there are sites where the Vacant Site Levy should be applied.*

In terms of Bray and Environs, the following zones are included: TC, SF, GTH.

#### **4.2. Bray Town Development Plan 2011-2017**

The site is zoned TC, Town Centre with a stated objective 'to provide for the development and improvement of appropriate town centre uses including retail, commercial, office and civic use, and to provide for 'Living Over the Shop' (LOTS) Residential Accommodation'.

Section 4.4.13 refers to Opportunity Sites with the site is identified in Table 4.1 as Site No. 3 with acceptable use identified as mixed-use development comprising commercial units on ground floor and office/residential units on upper floors.

Note - The Bray Municipal District Local Area Plan 2018 - 2024 is currently at public consultation on the material alterations with a closing date of 9 March for submissions on same. The identification of the subject site as an Opportunity Site (OP2) is subject to material alterations.

#### **5.0 Planning History**

Ref. 14/2147 (PL27.245361) – permission refused by WCC and ABP on appeal for a single storey discount foodstore principally for the under-utilisation of an opportunity site.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

An appeal was received on behalf of the owner and the grounds are summarised as follows:

- Intention of owner to develop the site with no intention for it to remain vacant;
- Site was subject of recent planning application by Aldi which was refused on appeal with follow up pre-planning discussions for alternative schemes;
- Appellant have also engaged with Council in relation to mixed use scheme with proposal agreed in principle with planning application to be lodged early in New Year highlighting that not appellants intention to allow site remain vacant;
- No legal basis for inclusion of lands as it is not residential or regeneration lands with site zoned town centre and no specific objective that suggests site is in need of regeneration;
- Objective HD19 of the County Development Plan is outlined with reference to the use of 'may' in terms of the inclusion on the Register which they states is presumed to be as a result of a formal designation;
- No specific objective in the CDP identifies this site as being in need of regeneration as required by the definition of regeneration in the Act.
- Draft Bray Municipal District Local Area Plan 2017 does not identify the site as being in need of regeneration with the site identified as an Opportunity Site (OP2);
- Use by WCC of Objective HD19 allows the Council to vary the status and arguably the zoning of specific Town Centre sites without going through the formal process and particularly blatant in this instance given Bray Plan undergoing review and site not identified for regeneration;
- Reference is made to the regeneration zones in the Dublin City Plan which has a Z14 zoning with the PA identifying areas in need of regeneration consistent with the requirements of the Urban Regeneration and Housing Act 2015 with South

Dublin County Council identifying regeneration lands within the 'REGEN' zoning objective;

## 6.2. **Planning Authority Response**

A response from the Planning Authority to the appeal was received on 22 January 2018 and is summarised as follows:

- Site, a former building merchants is vacant since 2014;
- Applications and pre-planning meetings acknowledged, does not negate application of the levy;
- Policy support for the application of the levy incorporated into the Wicklow County Development Plan with objective HD19 outlined and TC zones included in Bray;
- PA satisfied that objective provides necessary policy support for application of the levy.

## 7.0 **Assessment**

7.1. While not specifically stated in the notice issued by Wicklow County Council the lands in question appear from the accompanying documentation including the Planners Report to be included on the Vacant Site register in accordance with Section 5(1)(b) of the Urban Regeneration and Housing Act 2015.

7.2. Section 5(1)(b) refers to lands considered to come within the meaning included for Regeneration Land and the tests for such sites are as follows:

- (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 of 2000) in the area in which the site is situated or has adverse effects on the character of the area.

7.3. Section 6(6) of the Act states that 'a planning authority, or the Board on appeal, shall determine whether or not the site being vacant or idle has adverse affects on existing amenities or reduces the amenity provided by existing public infrastructure and

facilities (within the meaning of section 48 of the Act of 2000) in the area in which the site is situated or has adverse effects on the character of the area for the purposes of this Part by reference to whether—

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

*(b) anti-social behaviour was or is taking place in the area, or*

*(c) there has been a reduction in the number of habitable houses, or the number of people living, in the area, and whether or not these matters were affected by the existence of such vacant or idle land.*

7.4. In terms of part (i), that the site, or the majority of the site, is vacant or idle, I note the grounds of appeal on behalf of the site owner which refer to their intention to develop and the legal basis for the inclusion of the site on the Register. Firstly, in relation to intention to develop, I refer to Circular Letter PL7/2016, Appendix 3 where it is stated 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. It continues that if such a site meets the criteria for a vacant site in respect of either residential or regeneration land, then the levy may be applied. Clearly the same would apply in relation to an intention to apply for permission given an intention would not negate vacancy.

7.5. In respect of the appellant's claims that there is no legal basis for the inclusion of the lands, they state that the site is neither reisdnietai nor regeneration lands in the relevant Plan with the site zoned town centre with no specific objective that suggests site is in need of regeneration. It is further stated that the Draft Bray Municipal District Local Area Plan 2017 does not identify the site as being in need of regeneration with the site identified as an Opportunity Site (OP2). The appellant considers that the use by WCC of Objective HD19 allows the Council to vary the status and arguably the zoning of specific town centre sites without going through the formal process and they consider that this is particularly blatant in this instance given that the Bray Plan is undergoing review and site not identified for regeneration. They refer to regeneration zones in the Dublin City Plan which has a Z14 zoning with the PA identifying areas in need of regeneration consistent with the requirements of the Urban Regeneration and Housing Act 2015.

- 7.6. Firstly, I would note that as stated in the aforementioned Circular Letter PL7/2016, Appendix 2, the PA shall include objectives in its development plan for the development and renewal of identified areas in need of regeneration or reisdnieta development. I would note that the Dublin City Development Plan referenced by the appellant in respect of specific zonings which I address in the next section, also takes the approach of including an objective which identifies particular zonings for regeneration purposes (Section 14.9 of the City Plan). Secondly, in relation to the appellants reference to the Dublin City Development Plan and particularly the Z14 zoning I would note that the Board have also considered and confirmed notices issued by Dublin City Council under Section 5(1)(b) of the Act (regeneration) on sites zoned Z4 and Z5 in the City Plan.
- 7.7. I would note that the appellants do not challenge the physical vacancy of the site in the context of an actual use ongoing for the 12 months preceding its inclusion on the register and I would suggest that the current condition of the site would support same. Therefore, in my opinion, the site, or the majority of the site, is vacant or idle.
- 7.8. In order to comply with the requirements of section 5(1)(b), the site must also meet part (ii) of the section which provides that 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 of 2000) in the area in which the site is situated or has adverse effects on the character of the area. As I note above, Section 6(6) of the Act states that ‘a planning authority, or the Board on appeal, shall determine whether or not the site being vacant or idle has adverse affects on existing amenities or reduces the amenity provided by existing public infrastructure and facilities (within the meaning of section 48 of the Act of 2000) in the area in which the site is situated or has adverse effects on the character of the area for the purposes of this Part by reference to whether—
- (a) land or structures in the area were, or are, in a ruinous or neglected condition,*
  - (b) anti-social behaviour was or is taking place in the area, or*
  - (c) there has been a reduction in the number of habitable houses, or the number of people living, in the area, and whether or not these matters were affected by the existence of such vacant or idle land.*



7.9. Therefore these are the tests which determine whether or not the site being vacant or idle has adverse affects on existing amenities or reduces the amenity provided by existing public infrastructure and facilities (within the meaning of section 48 of the Act of 2000) in the area in which the site is situated or has adverse effects on the character of the area. The applicant does not reference the condition of the site or the tests included in Section 6(6) however it is addressed in the Planners Report which is outlined in Section 3.2 of this report (above). The PA consider that the site is located on a key commercial and shopping street in the town centre and at a prominent and highly visible location on the main access route into the town from the north. They state that the site is boarded up and neglected and its condition and vacancy degrades the overall appearance and vitality of the area and is likely to attract anti-social behaviour. However the Act requires specific consideration of same having regard to the parameters set out in Section 6(6). In relation to subsection (a) the structures and the land on the appeal site are in a neglected condition as is evidenced by the photos of the site. The site is unkempt and overgrown. I would also note that there is evidence of graffiti on the walls of the structure, the site is unkempt and therefore would meet with part (b) above. There is no evidence to address part (c) however given the site is not required to meet each of the three tests, the necessary parameters of Section 6(6) (a) and (b) have been met and in this regard the site is a vacant site as defined by Section 5(1)(b).

## 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 confirm that the site measuring 0.6ha at Castle Street (former Heitons Site), Bray, Co. Wicklow was vacant or idle for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 27<sup>th</sup> July 2017 shall be deemed to take effect from that date.

## 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, and

(d) the neglected condition of the site, which it is considered has adverse effects on exiting amenities and on the character of the area,

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.

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Una Crosse  
Senior Planning Inspector

May 2018