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Bord  
Pleanála

## Inspector's Report ABP-300552-18

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<b>Type of Appeal</b>	Section 9 Appeal against section 7(3) Notice
<b>Location</b>	Lands measuring 0.46 hectares, Main Street, Newtownmountkenny, Co. Wicklow
<b>Planning Authority</b>	Wicklow County Council.
<b>Planning Authority VSL Reg. Ref.</b>	VS/NTMK/04
<b>Site Owner</b>	Dwyer Nolan Developments Ltd.
<b>Date of Site Visit</b>	14 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 Lands measuring 0.46 hectares, at Main Street, Newtownmountkennedy, 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**

This site which has a stated area of 0.46 hectares is located to the east of Main Street in the town centre of Newtownmountkennedy. It is located at the junction of the Main Street and Woodstock Road and comprises a rectangular piece of land bounded by a stone wall with an entrance gate close to the junction. There is a large industrial structure located further east. The site is overgrown with trees and brambles and falls in gradient from the Main Street.

## 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/NTMK/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 4 parties including the Secretary and Directors of Dwyer Nolan 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 noted as being zoned town centre, with the type (of notice) 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:
  - Site is in a neglected condition, located in the core retail area, at a prominent location opposite the church and its condition and vacancy degrades the overall appearance of the area;
  - Objective of NMK LAP to use underutilised and vacant sites and provide for expansion of the town on lands close to the town centre which may be developed;
  - Considered subject site meets the criteria set out in the Act and that it should be brought forward for development to enhance the vitality and viability of the town centre.

- I would also notes a response to the submission received by the PA from the appellant prior to the issuing of the notice which states that it is acknowledged that there are plans in place to develop the site but that this does not negate the application of the levy under the Act.

## 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 Newtownmountkennedy the following zones are included – TC (town centre).

## 4.2. Newtownmountkennedy Local Area Plan 2008-2018

The site is zoned town centre. In terms of residential development at page 7/8 of the LAP two of the stated policy objectives, which are referenced by the PA include:

- 'Provide for the expansion of Newtownmountkennedy on lands close to the town centre, which may be developed with least infrastructural expenditure and which provide good access to the range of social, educational and economic facilities available in the town'.
- 'Encourage in-fill housing developments, the use of under-utilised and vacant sites and vacant upper floors for accommodation purposes and facilitate higher residential densities at appropriate locations, subject to a high standard of design, layout and finish'

## 5.0 The Appeal

### 5.1. Grounds of Appeal

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

- Letter from owners architect accompanying submission to the Council in response to the initial notice stating that Wicklow County Council clearly aware of the development proposal for the site having received correspondence in May 2017 of the Council's possible interest in pursuing some form of joint venture to include the adjoining Council site. This letter was received following a pre-planning submission;
- Reference is also made to the proposal to develop a library on the Council's part of the lands and the absence of finance for same with reference also made to the level differences between the sites;
- Requested the Council should allow sufficient time for the development of the proposal on the lands;
- Letter from owner stated land has not been in use for the last 12 months (letter dated 17 August 2017);

- Confirmation authorising inclusion of Council's adjacent site within application boundary only received from the Council on 11 December 2017 with proposal to lodge an application in January 2018 with receipt of Council's letter preventing works starting on site.

## 5.2. **Planning Authority Response**

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

- Acknowledged that the landowner has been developing a project for the lands including lands owned by WCC but note that future development proposals do not negate the application of the Levy;
- Adjoining site owned by the Council and referenced by the landowner also included on the Vacant Site Register (VS/NTMK/03);
- No impediment to landowner developing the land independently of the Council's land to the north and no question of the LA forcing the landowner to develop the combined proposals with no LAP objective for the lands to be developed in conjunction;
- LAP requires that any large scale proposal in the town centre be required to provide appropriate community facilities to be determined through consultation with the Community and Enterprise Section but did not suggest or require a joint proposal with this suggestion coming from the landowner (correspondence attached);
- Request the Board uphold the decision of the Council to include the site on the VSR;

## 6.0 **Assessment**

- 6.1. 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.

- 6.2. 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.
- 6.3. 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 includes correspondence to the PA, dated 17 August 2017, states that the site has not been used over the last 12 months. This situation has not changed as per my visit to the site. Furthermore, reference is made in the grounds of appeal, and the PA response to same, to the proposal to develop the site, to a proposed planning application and to a potential proposed joint venture. 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. I would note that an intention to apply for permission or an extant permission pertaining on lands does not negate the site being vacant or idle. Therefore, in my opinion, the site, or the majority of the site, is vacant or idle.
- 6.4. 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.
- 6.5. The matter of adverse effects on existing amenities or the character of the area is not addressed in the grounds of appeal. It is however addressed in the Planners Report which informed the inclusion of the site on the Register. As outlined above in Section 3.2 the Planners report addresses the matter of adverse effects. They state that the site is in a neglected condition, and given its location in the core retail area,

at a prominent location opposite the church that its condition and vacancy degrades the overall appearance of the area. They also refer to the objective of the NMK LAP to use underutilised and vacant sites and provide for expansion of the town on lands close to the town centre which may be developed. In this regard they consider that the subject site meets the criteria set out in the Act and that it should be brought forward for development to enhance the vitality and viability of the town centre.

6.6. While matters related to the LAP may indeed be correct, they are matters of policy rather than considerations of amenity. The Act specifically refers at Section 5(1)(b)(ii) to the relevant tests by reference to Section 6(6). Section 6(6) of the Act provides the parameters by which the planning authority, or the Board on appeal, shall determine whether or not 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 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.*

6.7. In relation to subsection (a) the land on the appeal site is overgrown with trees and shrubbery and I would agree that it is in a neglected condition with branches over sailing the wall addressing the footpath on Main Street. However, I did not note any evidence of anti-social behaviour and while the site is unkempt I do not consider it would meet with part (b) above. There is no evidence to address part (c) that there has been a reduction in the number of habitable houses, or the number of people living, in the area, however given the development undertaken elsewhere in the town centre I do not consider that it would be reasonable to consider that such a reduction is the case. Therefore while the test in Section 6(6)(a) may be met I do not consider that Section 6(6) (b) is met and therefore I do not consider that the site can be categorised as a vacant site as defined by Section 5(1)(b).



## 7.0 Recommendation

- 7.1. I recommend that in accordance with section 9(5) of the Urban Regeneration and Housing Act 2015, the Board should cancel that the site measuring 0.46 hectares, Main Street, Newtownmountkennedy, 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 removed.

## 8.0 Reasons and Considerations

- 8.1. 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 condition of the site, while overgrown, does not display any visible evidence of anti-social behaviour and therefore it is considered that it does not have adverse effects on the existing amenities or character of the area.

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.

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Una Crosse  
Senior Planning Inspector

May 2018