



An  
Bord  
Pleanála

## Inspector's Report ABP-300568-18

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<b>Type of Appeal</b>	Section 9 Appeal against section 7(3) Notice.
<b>Location</b>	Rosehill, Circular Road, Kilkenny.
<b>Planning Authority</b>	Kilkenny County Council.
<b>Planning Authority VSL Reg. Ref.</b>	ID 155.
<b>Site Owner</b>	Elm Park Construction Limited.
<b>Date of Site Visit</b>	4 April 2018.
<b>Inspector</b>	Stephen Rhys Thomas.

## 1.0 Introduction

- 1.1. This appeal refers to a section 7(3) notice issued by Kilkenny County Council, stating their intention to enter the lands at Rosehill, Circular Road, Kilkenny 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

- 2.1. The appeal site, which is irregular in configuration is located approximately a kilometre to the southwest of Kilkenny City. The site is prominently located at the junction of College Road and Callan Road, which defines the site's south-eastern boundary and Circular Road, which defines the site's north-eastern boundary. The junction itself is a mini roundabout. The boundary to the northwest adjoins a residential estate Rose Hill Court, a cul-de-sac development with a mix of terraced, semi-detached and detached dwellings. The remaining boundary to the southwest adjoins a commercial vehicles centre.
- 2.2. The site is level and surrounded by hoarding and a metal fence backed by plastic mesh. There is a large amount of builder's materials (scaffolding gear/poles, traffic cones, fuel tanks) and builder's waste on the site , along with steel transport containers and a small commercial van. The site is mostly overgrown with grass. There is a footpath along the site's roadside boundaries and a Beech hedge has been planted to the boundary with Rose Hill Court.

## 3.0 Planning Authority Decision

- 3.1. **Planning Authority Notice:** Kilkenny County Council advised the site owner that the subject site (Planning Authority site ref. ID 155) had been identified as a vacant site. The notice, issued pursuant to section 7 of the Act and dated 7 December 2017, stated that particulars of the site have been entered on the Vacant Sites Register.
- 3.2. **Register of Vacant Sites Report:** The site is zoned Phase 1 Residential in the Kilkenny City and Environs Development plan 2014-2020. The site is classified as residential land and has been vacant or idle for the last 12 months. Until the site is

brought into active use it should remain on the VSR. The report is accompanied by a site location map.

#### 4.0 **Development Plan / Planning History**

4.1. The Kilkenny City and Environs Development plan 2014-2020 is the operative development plan. The site is located on lands that are subject to zoning Existing Residential – ‘Objective: To protect, provide and improve residential amenities.’.

Objective 3A To promote the redevelopment and renewal of areas identified having regard to the core strategy, that are in need of regeneration, in order to prevent—

(i) adverse effects on existing amenities in such areas, in particular as a result of the ruinous or neglected condition of any land,

(ii) urban blight and decay,

(iii) anti-social behaviour, or

(iv) a shortage of habitable houses or of land suitable for residential use or a mixture of residential and other uses.

The levy may be applied to all identified ‘Regeneration’ land and ‘Residential’ land in existing land use zonings. In particular, the areas covered by the following zoning objectives are considered to constitute regeneration land:

- General Business
- Mixed Use
- Business Park

Other regeneration zonings may also be identified in any relevant Local Area Plans.

#### 4.2. **Planning History**

PA reference **17/162** and An Bord Pleanála reference **PL10.248925**. Permission for 15 residential units consisting of 8 apartments and 7 houses. February 2018.

PA reference **08990074**. Permission for 33 apartments and a ground floor level medical centre with a basement car park. February 2009.

PA reference **14990007**. Permission refused to extend the appropriate period of 08/74. April 2014.

The site has a lengthy planning history which includes recent refusals of permission for similar types of residential development.

## **5.0 The Appeal**

### **5.1. Grounds of Appeal**

5.1.1. The landowner has submitted an appeal to the Board, against the decision of Kilkenny County Council to enter the subject site on the Register. The grounds of the appeal can be summarised as follows:

- After a lengthy planning process involving a variety of residential development proposals, the most recent proposal is currently with the Board (reference PL10.248925). This demonstrated a clear commitment to the development of the site.
- The site was acquired in 2015 and is not vacant, it is used as a secure compound for construction machinery used in nearby developments.
- The appellant notes that the planning authority may not have discharged their obligations under section 8 of the 2015 Act with respect to specific information required on the VSR and questions the validity of the Notice. Specifically, the appellant states that each site on the register should have a property Folio reference number, name/address of the owner and the particulars of the market value of the site.

### **5.2. Planning Authority Response**

None.

## **6.0 Assessment**

6.1. 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 onto the Kilkenny County Council VSR on the 7 December 2017.

- 6.2. By reference to the planning authority notice, it is stated that the subject site comprises residential land for the purposes of the Vacant Site Levy. The subject site is located in an area zoned Existing Residential – ‘Objective: To protect, provide and improve residential amenities’ in the current Development Plan. Objective 3A of the current plan also sets out to promote the redevelopment and renewal of areas identified having regard to the core strategy, that are in need of regeneration, in order to prevent a combination of impacts including a shortage of habitable houses or of land suitable for residential use or a mixture of residential and other uses. This assessment takes into account the characteristics of the site in the context of Section 5(1)(a) residential land.
- 6.3. The owner states that after several attempts, the site has planning permission for a residential development and that this proves a determination to develop the site. The site is currently in use as a storage compound for construction machinery used elsewhere in the area. In addition, the appellant queries the validity of the notice issued by Kilkenny County Council with reference to information that should be contained on the register.
- 6.4. Firstly, the processes employed by Kilkenny County Council regarding the establishment of the Vacant Sites Register is a matter beyond the scope of this appeal. I note that the appellant has raised the issue of site market value and that this should be determined by the planning authority as soon as may be after the site is entered on the register. Market value is a separate process to the establishment of a Vacant Sites Register and has a different mechanism for appeals made to the Valuation Tribunal, as set out in section 13 of the 2015 Act. Therefore, this assessment is confined to the matters and issues raised in the grounds of appeal that are relevant to section 9 of the 2015 Act.
- 6.5. 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. 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.*

Whilst I note a recent planning permission for residential development, no construction activity has taken place on the site. It is for this and other reasons that the site meets the criteria for inclusion on the VSR and the existence of an extant planning permission has no part to play in this instance.

6.6. With reference to the appellant's assertion that the site is in use as a construction compound for developments elsewhere, I note the condition of the site. There is a collection of small scale construction equipment on the site, along with building waste and transport containers. I observed no activity on the day of my site visit. The appellant has not supplied evidence of a planning permission for a construction compound or storage yard at this location. In addition, I did not observe any ongoing works that could be considered as part of the recent permission, An Bord Pleanála reference PL10.248925 refers.

6.7. The Urban Regeneration and Housing Act 2015 is clear that no regard shall be had to any unauthorised development or unauthorised use. The appellant has not supplied any evidence of a planning permission for the current use of the site. In the absence of any documentary evidence to support the appellant's claim, I consider that the existing use of the site may be an unauthorised use and is therefore governed by section 6(7) of the Urban Regeneration and Housing Act 2015. As directed by section 6(7) the Act, in determining whether the site was vacant or idle for the period concerned, the Board shall not have regard to any unauthorised use. I consider that the site is in an area in need of housing and that the site is suitable for housing, in accordance with section 5(1)(a) of the Act.

6.8. With reference to the statements made by the owner with respect to a recent planning permission and a determination to develop the site. The Board may wish to note that under section 10 of the 2015 Act, the obligation to notify the planning authority of any changes in the status of the site is on the owner, as follows:

*(1) The owner of a vacant site that stands entered on the register under section 6 (2) shall notify the planning authority in whose functional area the site is located if it is no longer vacant or idle.*

*(2) If, at any time, a planning authority is satisfied that a site that stands entered on the register under section 6 (2) is no longer a vacant site it shall cancel the entry on the register in respect of that site.*

Therefore, it is in the owner's power to provide suitable evidence to satisfy the planning authority that the site is no longer vacant or idle and cancel the entry of the site on the register.

- 6.9. The site is zoned residential and as stated by the planning authority, there is a need for housing in the area. In addition, the site is suitable for the provision of housing as evidenced by an extant planning permission and the residential land use zoning. Given the foregoing, I conclude that the majority of the site is vacant or idle in accordance with Section 5(1)(a)(i)(ii) and (iii) of the 2015 Act. I am satisfied that the entry of the subject site on the Vacant Sites Register of Kilkenny County Council should be confirmed.

## **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 confirm that the site at Rosehill, Circular Road, Kilkenny was vacant or idle for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 7 December 2018 shall be deemed to have effect from that date.

## **8.0 Reasons and Considerations**

- 8.1. 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 appellant,
- (c) The report of the Inspector,
- (d) The need for housing, that the site is suitable for the provision of housing and that insufficient reason is put forward to cancel entry on the Vacant Sites Register,
- (e) The owner has not provided satisfactory evidence to suggest that the use has the benefit of planning permission,

the Board is satisfied that the site was vacant or idle for the relevant period.

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Stephen Rhys Thomas  
Planning Inspector

2 May 2018