



An
Bord
Pleanála

Inspector's Report ABP-300575-18

Type of Appeal	Section 9 Appeal against section 7(3) Notice.
Location	Lands at Cash and Carry, New Street, Kilkenny.
Planning Authority	Kilkenny County Council.
Planning Authority VSL Reg. Ref.	ID 11.
Site Owner	Veridical Ltd.
Date of Site Visit	4 April 2018.
Inspector	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 Cash and Carry, New Street, 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 site is located south west of Kilkenny town centre, along Walkin Street and Lower New Street. The site lies behind a terrace of two storey buildings along Walkin Street and has a vehicular entrance opposite a small graveyard. The main entrance and car park to the premises is along Lower New Street. The playing fields associated with Saint Kieran's College are located to the south of the site.
- 2.2. The site comprises a collection of warehouse buildings of varying age and condition. A two storey stone building is at the heart of a collection of later structures which are set out to form a large area of covered storage space. The boundaries of the site comprise high concrete block walls with steel gate access. The external areas of the site adjacent to the public road are landscaped and well maintained. The overall appearance of the structures is characterised by weathering and general wear and tear.

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 11) 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 General Business in the Kilkenny City and Environs Development plan 2014-2020, note Variation 4. The site is classified as regeneration land and has been vacant or idle for the last 12 months. The buildings are in a fair to poor condition and the character of New and St Rioch Street are negatively affected. The site is having an impact on the number of people

living in the area, small area population statistics from the 2011 Census indicate a reduction of 14 persons. The site is considered vacant or idle. Site should be included on the VSR. The report is accompanied by photographs and 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 General Business – ‘Objective: To provide for general development.’.

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 **07/990145**. Permission for the demolition of buildings on site, provision of a mixed use development. December 2008.

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:

- The site is a commercial site and has not contributed to land or structures in the area becoming ruinous or neglected.
- There is no anti-social activity taking place in the area.
- There has not been a reduction in the number of habitable houses in the area.
- The site does not comply with section 6 of the 2015 Act, because the property does not have an adverse effect on the existing amenities, facilities or character of the area.
- The site was purchased in 2016, it is a commercial premises and is available for lease with Sherry Fitzgerald McCreery (Kilkenny).
- The owner has a strategy to bring the site into beneficial use, by upgrading the forecourt parking area, cleaning and redecorating the premises.
- 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

No valid response.

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 on 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 regeneration land for the purposes of the Vacant Site Levy. The subject site is located in an area zoned General Business – ‘Objective: To provide for general development.’ in the current Development Plan. Objective 3A of the plan sets out to promote the redevelopment and renewal of areas identified having regard to the core strategy, that are in need of regeneration. My assessment takes into account the characteristics of the site in the context of Section 5(1)(b) regeneration land.
- 6.3. The appellant states that as a commercial site, it has not contributed to land or structures in the area becoming ruinous or neglected. There is no anti-social behaviour taking place and there has not been a reduction in the amount of habitable houses or people living in the area. The site is not having an adverse effect on the amenities of the area and is available for lease at present. Finally, the appellant raises questions about the accuracy and extent of information published on the register by the Council.
- 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, my 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 Council maintain that the structures are in a poor and neglected condition and that the character of the area is negatively affected by the condition of the site. Central Statistics Office figures are provided and detail that the population of the area has fallen by 14 persons between 2011 and 2016 census.

6.6. 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.*

6.7. 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.*

6.8. 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 outlines efforts to bring the site up to a certain quality and that the site is currently managed by an estate agent in order to source a tenant. I note that the appellant states that the site was purchased in 2016 and has been available for lease. This would suggest that the premises have been vacant since 2016 and therefore vacant or idle for the 12 months preceding inclusion on the register. On the day of my site visit I observed no discernible user of the warehouse buildings other than a small amount of office furniture stored inside the entrance to the warehouse. I do not consider the storage of a small amount of office furniture to denote that the site was in full or beneficial use.

6.9. Critically the appellant challenges the second part of the requirement in relation to Section 5(1)(b), insofar as the site has adverse effects for which there are three

parameters detailed in section 6(6). The appellant believes the site does not meet any of these requirements then it is not vacant.

- 6.10. The first matter is that the '*land or structures in the area were, or are, in a ruinous or neglected condition*'. The appellants reference this subsection of the Act and state that any ruinous and neglected lands in the area cannot be attributed to their site as it is well maintained and secured. I would tend to agree that it is unreasonable to attribute the condition and physical state of lands in the area at the hands of others outside the control of the site owner. In any case, I did not observe examples of serious ruin or neglect in the area that would have an adverse effect on the area's character. The appellant's premises show signs of wear and tear, but they are not in my opinion ruinous or neglected. In summary, I do not see that ruinous or neglected lands are an issue in this part of Kilkenny or the appeal site.
- 6.11. In relation to Section 6(6)(b) '*anti-social behaviour was or is taking place in the area*', I note that there was no evidence of graffiti on the structures of the appeal site and there was no evidence of litter. In terms of the final consideration Section 6(6)(c), whilst I note the response of the applicant to the effect that there has been no reduction in the number of habitable dwellings in the area, the Council have stated that there has been a fall in population between the 2011 and 2016 census periods. The population for the Small Area (097061003) fell from 294 to 280 persons. Consequently, there has been a reduction in the number of people living in the area, and that this is due to the existence of such vacant or idle land. In my view, the site meets the third parameter and given the inclusion of 'or' in the Act there is no requirement to meet all three. The site should be considered vacant or idle for the purposes of the Act. I am satisfied that the entry of the subject site on the Vacant Sites Register of Kilkenny County Council should be confirmed.
- 6.12. With reference to the statements made by the appellant with respect to a bringing the site in to beneficial use. 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.

6.13. The site is zoned regeneration. Given the foregoing, I conclude that the majority of the site was vacant or idle in accordance with section 5(1)(b) and (6)(6) 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 6(6) of the Urban Regeneration and Housing Act 2015, the Board determine that the site has adverse effects on existing amenities or reduced 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, that the site at Cash and Carry, New Street, Kilkenny is located. Therefore, the entry on the Vacant Sites Register on the 7 December 2017 shall be deemed to take 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 idle nature of the site and the resultant adverse effects on the character of the area resulting from a reduction in the number of people living in the area, and that insufficient reason is put forward to cancel entry on the Vacant Sites Register,

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

Stephen Rhys Thomas
Planning Inspector

2 May 2018