



An
Bord
Pleanála

Inspector's Report ABP-300588-18

Type of Appeal	Section 9 Appeal against section 7(3) Notice
Location	Lands measuring 1.5 hectares, rear of Parkview Hotel, Newtownmountkennedy, Co. Wicklow
Planning Authority	Wicklow County Council.
Planning Authority VSL Reg. Ref.	VS/NTMK/16
Site Owner	Swan Oak Ltd.
Date of Site Visit	14 April 2018
Inspector	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 comprising lands measuring 1.5 hectares, to the rear of the Parkview Hotel, 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

The site comprises an area of ground which is located to the rear of the Parkview Hotel in Newtownmountkennedy. The hotel itself is located on Main Street with parking to the rear. The site is adjoined by Season Park residential development to the west and the rear of properties on Main Street to the east. The site is not visible from the Main Street of the town and is not easily accessible either from Main Street, the watercourse to the east or the housing development to the west.

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/16) had been identified as a vacant site. The notice, issued pursuant to section 6 of the Act and dated 1st 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 Swan Oak 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 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:
 - Lack of development on site lands impacts on the ability of the town centre to fulfil its function as set out in the LAP and CDP;
 - Site is a key site for mixed use/commercial development in the town centre outside of retail core, it immediately adjoins the new town centre development and permission previously granted for a large mixed use development (refused on appeal);
 - 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 note 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 the lands are in agricultural use and 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.

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:

- Swan Oak is owned by Kineada Ltd,
- Lands zoned town centre;
- Owner intends to develop lands in accordance with schedule (attached which proposes planning application submitted in 2019);
- Lands not developed due to economic downturn;
- Lands subject to infrastructure constraints in the area;
- Lands developed in conjunction with adjoining action area plan;
- Regional distributor road to pass through the lands which is subject to a granted phased planning permission to be built in accordance with schedule attached;
- Lands not vacant and currently farmed and let to a farmer;

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:

- Infrastructure constraints not detailed and PA do not consider any such constraints in place that would impact on the potential development of the site;
- Irish Water proposal for a large water storage reservoir would not impede a development of the scale appropriate to the site however potential for IW to consider the site an extension of the extant proposal for the road and c.800 houses (Ref.06/6101 & PL27.227704) & (Ref.12/6477 & PL27.241521);
- New distributor road permitted under extant permission above traverses southern side of the site connecting Main Street to the new Western distributor road which would serve the site with no pre-development or phasing stipulations attached to development of the road;
- Use of site for agriculture and intention to develop lands do not negate the inclusion of the site on the Register;
- Considered site fulfils the criteria for inclusion on the register;

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 refers to the lands being farmed and the proposal to develop the lands in the future with the infrastructure constraints attached outlined. While I acknowledge same, the grounds proposed do not disclaim vacancy. The intention to develop is not sufficient. The Act is clear: the

test for inclusion is the past condition of the site for the 12 months preceding the date of entry on the Register. In terms of the use of the site for agricultural purposes, I refer to Circular Letter PL7/2016, Appendix 3 where it is stated that: *“pending development appropriate to its zoning, the land may currently or on an interim basis have an agricultural use. Given the purpose of the levy, particularly in the context of the provision of housing, in such cases the levy may be applied, as the site concerned is not being used for the purpose for which it was zoned”*. If the site meets the criteria for inclusion on the register, the current use for agriculture, the existence of a previous planning permission or an intent to apply for permission has no part to play. Therefore, in my opinion, **the site, or the majority of the site, is vacant or idle.**

6.4. In relation to the second test in the Act in respect of regeneration lands, the determination of what is meant by adverse effects on existing amenities as addressed in Section 5(1)(b)(ii) is provided by Section 6(6) of the Act which 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.

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. They state that the lack of development on the lands impacts on the ability of the town centre to fulfil its function as set out in the LAP and CDP and that the site is a key site for mixed use/commercial development in the town centre outside of retail core, it immediately adjoins the new town centre development and permission previously granted for a

large mixed use development. There is also reference to objectives in the 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. While all these matters may indeed be correct, they are matters of policy rather than considerations of amenity which are the tests outlined in Section 5(b)(ii).

- 6.6. The PA do not address the considerations set out in section 6(6) in their report relying on the LAP policies as outlined above. In this regard I do not consider that the site could be described as *being in a ruinous or neglected condition*. The site is not visible from the Main Street and is difficult to access. In addition I do not consider that anti-social behaviour was or is taking place in the area, or that 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 given the recent development on the other side of the river. Therefore I do not consider that the site meets any of the criteria set out in Section 6(6) and therefore would not comply with both of the requirements of 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 1.5 hectares, rear of Parkview Hotel, Newtownmountkennedy, Co. Wicklow was vacant or idle for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 27th 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) that the site, which is not directly visible from the Main Street, does not appear neglected and 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.

Una Crosse
Senior Planning Inspector

May 2018