



An
Bord
Pleanála

Inspector's Report ABP-300554-18

Type of Appeal	Section 9 Appeal against section 7(3) Notice
Location	Lands south of Clermont College, Rathnew, Co. Wicklow
Planning Authority	Wicklow County Council.
Planning Authority VSL Reg. Ref.	VS/RN/05
Site Owner	Cedarbrick 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 a site measuring 1.88ha on a site to the south of Clermont College, Rathnew, 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. It is noted that the notice was issued to Cedarbrick Limited.

2.0 Site Location and Description

The site with an area of 1.88 hectares comprises a greenfield without direct road access. The site is adjoined by the Clermont College complex to the north and northeast with substantial planting in the vicinity of the site. To the south the site is bounded by a stream south of which is the wastewater treatment plant. To the west a single dwelling set back from the Main Road adjoins the site.

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/RN/05**) 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 Cedarbrick 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 described as greenfield.
- Site is noted as being zoned village centre, with the type (of notice) referred to as regeneration;
- It is stated that the site which has an area of 1.88 hectares 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 these lands undermines the achievement of important objectives for this zone and the wider village;
 - Site is in key area for expansion of Rathnew village centre, being located between the traditional village centre and the Clermont Campus where significant development is planned;
 - Village centre zone is targeted to form the link and gateway between the two areas, to be laid out in a series of new streets and squares and is designated to provide for range of retail, retail services and accommodation in the Wicklow Town-Rathnew Development Plan;
- I would also note the response of the PA to the submission received from the owner prior to the issuing of the notice which states it is in agricultural use and at FI stage of an application (Ref. 16/1444) which it is intended to construct once permitted. The PA acknowledge the live application but notes that such an application does not negate inclusion 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 Wicklow Town and Rathnew the following zones are included: TC, VC, PT, MU

5.0 Wicklow Town and Rathnew Development Plan 2013 – 2019

The site is zoned village centre. Section 4.3 of the Wicklow Town and Rathnew Development Plan

There are a number of objectives which relate to the Clermont Area of the town as follows:

Rathnew 4 To encourage and facilitate improvements to the existing retail / services area along the main street, including the provision of new / expanded retail and retail services developments, including the provision of a new supermarket, and improved shops fronts

Rathnew 5 To enhance the amenity value of the Rathnew Stream and to facilitate improved access, subject to objective Water Systems Objective WS4 to this area, subject to the protection of its environmental and ecological value.

Rathnew 6 To improve pedestrian movement by facilitating the provision of pedestrian crossings to the western area from Clermont Campus to Charvey Lane

Rathnew 7 To improve existing and provide new footways and cycleways as funding allows

Rathnew 8 To encourage the development of a transport hub around the existing bus stops at the Woodside estate and St Ernan's School, including improved accessibility, car-parking, bus stop facilities, shelters and covered bicycle parking

Rathnew 9 To facilitate the delivery of the Rathnew Inner Relief Road

6.0 Planning History

Ref. 16/1444 – permission granted for a 1-3 storey village centre comprising retail convenience foodstore, 26 dwellings and car parking phases, second phase of the new Rathnew Inner Relief Road (Compliance with Objective RP2).

7.0 Grounds of Appeal

An appeal was received on behalf of Crimson Lane Limited and the grounds are summarised as follows:

- Planning permission granted under Reg. Ref. 16/1444 in November 2017 for a mixed use scheme including a convenience food store, cafe, 36 residential units and c.1ha of public open space with site subject to this process from December 2016-Novmebr 2017;
- Intend to commence development works over coming months and genuine intent for the implementation of the permission;

- While acknowledge levy can be applied where permissions not activated, request the Board consider that the final grant of permission only issued weeks prior to the inclusion on the Register with inclusion considered premature in this case;
- Ask that Board consider that site is not strictly residential in nature nor is it primarily zoned for residential use (the earlier section of the appeal refers to section 5(1)(a));
- Site is currently in agricultural use which has been the case for the last number of years;
- Lands are maintained and are not in a neglected condition with no anti-social behaviour taking place;
- Appearance of the site is agricultural in nature and does not have a negative visual impact from the roadside and therefore does not impact on the existing amenities in the area nor does it reduce the amenity provided by existing public infrastructure and facilities and reject views of the PA on this matter;

8.0 Planning Authority Response

A response from the Planning Authority to the appeal was received on 31 January 2018 and is summarised as follows:

- Acknowledged that planning process ongoing throughout December 2016- November 2017 but engaging in planning process does not negate application of the levy;
- PA would welcome activation of the permission and would remove the site from the Register if development commences;
- Site not considered for application of levy under the residential category but under the regeneration category as site zoned Village Centre which is included Objective HD19;
- Existing agricultural use does not negate application of the levy;
- PA considers that the site being vacant or idle has adverse effects on the existing amenities with lack of development undermining the achievement of important objectives for this zone

9.0 Assessment

- 9.1. 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.
- 9.2. 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.
- 9.3. 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 both to the use of the lands for agriculture and to the recent permission granted on the site. 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"*. In terms of the extant permission, I refer to the same 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. 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 for the purposes of Section 5(1)(b)(i).
- 9.4. 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.

9.5. The matter of adverse effects on existing amenities or the character of the area is addressed in the appeal where it is stated that the lands are maintained and are not in a neglected condition with no anti-social behaviour taking place. They state that the appearance of the site is agricultural in nature and does not have a negative visual impact from the roadside and therefore does not impact on the existing amenities in the area nor does it reduce the amenity provided by existing public infrastructure and facilities and reject the views of the PA on this matter.

9.6. In response to the grounds of appeal the PA considers that the site being vacant or idle has adverse effects on the existing amenities with lack of development undermining the achievement of important objectives for this zone. 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.

9.7. In relation to subsection (a) the land on the appeal site is not in a neglected condition. Furthermore, I did not note any evidence of anti-social behaviour and therefore 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 I do not consider that the tests outlined in Section 6(6) are met and therefore I do not consider that the site can be categorised as a vacant site as defined by Section 5(1)(b).

10.0 Recommendation

10.1. 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, to the south of Clermont College, Rathnew, 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.

11.0 Reasons and Considerations

11.1. 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 land is not neglected nor does it 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

