



An
Bord
Pleanála

Inspector's Report ABP-300621-18

Type of Appeal	Section 9 Appeal against section 7(3) Notice.
Location	The Beeches, Ferrybank, Co. Kilkenny.
Planning Authority	Kilkenny County Council.
Planning Authority VSL Reg. Ref.	ID 201.
Site Owner	Meadowcourt Homes Limited.
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 The Beeches, Ferrybank, Co. 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 north of The Beeches, a housing estate at the outer edges of Ferrybank, a suburb of Waterford City in County Kilkenny. The subject lands adjoin the existing housing Beeches estate and bound Berkeley Road to the west.
- 2.2. The lands comprise the remnants of a compound that would have served the construction of development at The Beeches and Berkeley Drive to the south. There is a small amount of construction material and some construction machinery on the site, including a portacabin, fencing equipment, tanks and blocks. The site slopes upwards from the road. The site boundaries include concrete block walls to the adjacent housing estate, construction hoarding to the road and wire mesh fencing to an access road to agricultural land to the east.

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 201) 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 Residential (Medium Density) in the Ferrybank Belview LAP 2009 as amended. 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.

4.0 Development Plan / Planning History

- 4.1. The **Ferrybank Belview LAP 2017** is the operative development plan. The site is located on lands that are subject to zoning R3 – Residential. This zoning allows for new residential development and other services incidental to residential development and reflects the densities which exist in existing housing developments at these locations. While housing is the primary use in this zone, childcare facilities and recreation will also be considered.

A Pedestrian Linkage Objective (PL1) crosses part of the site.

Section 4.5 Vacant Sites Levy

The Urban Regeneration and Housing Act 2015 introduced a Vacant Sites Levy as a site activation measure to ensure that vacant or underutilised land in urban areas is brought into beneficial use. This Plan will promote, encourage and facilitate the appropriate development of sites and areas in need of development and renewal in order to prevent:

- Adverse effects on existing amenities in such areas, in particular as a result of the ruinous or neglected condition of any land
- Urban blight or decay
- Anti-social behaviour, or

- A shortage of habitable houses or of land suitable for residential use or a mixture of residential and other uses

The levy can be applied on land designated as either “residential” or “regeneration”. For the purposes of implementing the levy, the following zones are designated:

Residential: Residential Arcadian, Residential Low Density, Residential, Protect and Enhance Existing Residential Amenity.

Regeneration: Urban Village, Business Industry and Technology Parks

These zones will be examined to determine if there are sites where the Vacant Site Levy is applicable under the provisions of Urban Housing and Regeneration Act 2015 and all associated regulations and guidance.

4.2. **Planning History**

PA reference **15225**. Permission to develop 5 residential sites in in place of 10 houses previously permitted. November 2015.

PA reference **14185**. Extension of duration until October 2018 of 05/217, 07/1929 and 10/178. Residential development of up to 80 houses.

PA reference **05217**. Permission for a residential development of up to 80 houses. August 2005.

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 appellant disputes the address used by the planning authority, Meadowcourt Homes Limited does not have an address at Johnstown, Co Waterford.
- The online VSR was not available for public inspection until January 2018 and insufficient information was available to prepare a timely response. In addition, the online record for the appellant is incorrect.

- The site has the benefit of a planning permission (15/217) and ongoing negotiations concerning Part V agreements have caused delays.
- The preparation of the draft Ferrybank and Belview LAP have also attracted delays due to uncertainty regarding the appellant's zoning amendments to the site. Without such clarification, the content of a planning application could not be finalised.
- The site should not be considered as idle, because ongoing activity to achieve planning permission is being undertaken by the appellant.
- The development objectives for the site were not finalised and so the appellant cannot be accused of holding back development. The LAP only came into force in December 2017.

The appeal is supported by previous correspondence and emails concerning the VSR and online access and completeness of records. In addition, submissions made with respect to the LAP are included.

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 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 R3 – Residential in the current Local Area Plan. Section 4.5 of the LAP sets out to promote the redevelopment and renewal of areas 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 appellant has raised an issue in relation to the address used by the Council and other administrative queries in relation to the placing of the site on the register. The site has a valid permission and the appellant has been negotiating Part V arrangements with the Council. The appellant is in the process of preparing a new planning application, however, the process has been stalled whilst awaiting the outcome of the Ferrybank and Belview LAP. The appellant considers that the ongoing preparation of a planning application and negotiating Part V agreements constitutes an active use for the site.
- 6.4. Firstly, the administrative processes, such as determining postal addresses, employed by Kilkenny County Council regarding the establishment of the Vacant Sites Register is a matter beyond the scope of this appeal. 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.*
- 6.6. Whilst I note a 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.
- 6.7. I note the appellants comments in referring to the planning process and Part V negotiations with the Council as actions that should render the site active. However, the 2015 Act does not indicate that administrative activity in relation to a site, such as obtaining planning permission or negotiating planning conditions, should be considered when assessing the status of a site. I do not consider that the activities listed by the appellant comprise either works or a permitted and ongoing use of the lands.

- 6.8. The findings of the Council in relation to the condition of the site were confirmed by me on the date of my site visit. The site has no discernible use at present. The site boundaries are not well maintained, construction hoarding is in poor condition and wire mesh fencing is poorly erected and fallen down in places. The site accommodates a variety of construction material and construction waste, but exhibits no evidence of recent or ongoing construction activity. Taking all these matters in to account and having regard to the planning authority's observations; the site is vacant or idle and has been for the relevant period.
- 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 The Beeches, Ferrybank, Co. 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,

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

Stephen Rhys Thomas
Planning Inspector

2 May 2018