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Bord  
Pleanála

## Inspector's Report ABP-300645-18

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<b>Type of Appeal</b>	Section 9 Appeal against section 7(3) Notice
<b>Location</b>	Lands at Adelaide Road, Bray, Co. Wicklow
<b>Planning Authority</b>	Wicklow County Council.
<b>Planning Authority VSL Reg. Ref.</b>	VS/B/05
<b>Site Owner</b>	TBD Group Holdings Ltd/Glenveagh Homes Limited
<b>Date of Site Visit</b>	12 April 2018
<b>Inspector</b>	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 0.3ha at Adelaide Road, Bray, 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 TBD Group Holdings Ltd. However the appeal has been submitted by A&L Goodbody on behalf of Glenveagh Homes Limited who state that they have recently acquired the site from Granelt Properties Ltd and BWG Foods Ltd (both in receivership).

## 2.0 Site Location and Description

The site includes approximately 0.3 hectares of land directly opposite Bray Dart Station with frontage addressing the Station, Adelaide Road and Florence Road which is one way. There is a substantial warehouse structure on the site with areas of open ground surrounding the building.

## 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/B/05**) had been identified as a vacant site. The notice, issued pursuant to section 6 of the Act and dated 1<sup>st</sup> 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 TBD Group Holdings 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:

- Warehouse type building located on the site (former cash and carry). The small car park associated with the building is stated to be in use as a private paid car park for which there does not appear to be permission.
- Site is noted as being zoned town gateway and transportation hub, with the type (of notice) 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.
- Stated that the unauthorised private car park use must be discounted;
- In relation to adverse effects on existing amenities it is stated:
  - Site is located in the designed 'town gateway and transportation hub of Bray where is policy to provide for development and create a gateway to the town with the area considered suitable for higher density mixed use development.
  - Poor visual condition and vacancy of the site degrades the overall appearance and vitality of the area which is likely to attract anti-social behaviour and undermines the achievement of the objectives for the area;
- 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 the intention of the receiver to dispose of the property and that part of the site is being used as a car park under third party licence. The PA acknowledge intention but note it does not negate inclusion, the car park use is unauthorised and vacancy and condition of the building degrades overall appearance of the area.

## 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 Bray and Environs, the following zones are included: TC, SF, GTH.

### 4.2. Bray Town Development Plan 2011-2017

The site is zoned town gateway and transportation hub in the Plan which was in place at the time the notice was issued. I would note that the Bray Municipal District Local Area Plan 2018 - 2024 was at public consultation on the material alterations with a closing date of 9 March for submissions on same.

## 5.0 Planning History

**Ref. 07/630159 (39.226614)** Permission granted for 4/5/6 storey development in 2 blocks with 64 apartments and commercial ground floor uses.

**Ref. 06/630098 (39.218402)** Permission refused for 5 storey development in 2 blocks with 82 apartments.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

An appeal was received on behalf of the owner and the grounds are summarised as follows:

- Current owner has not had sight of the notice of intention or response to same with the current owner acquiring same on 5 December 2017;
- Requirements of Section 5(1)(b)(ii) have not been satisfied;
- Accepted no development has been carried out for the last 12 months site cannot be classified as a vacant site as it has no adverse effects on the existing amenities in the area, has not reduced the amenity provided by existing public infrastructure and facilities and has no adverse effects on the character of the area;
- Section 6(6) requires the Board to determine the above by reference to three particular considerations;
- The first is that land or structures in the vicinity of the site are in a ruinous or neglected condition which is not the case in this instance with surrounding land and structures well preserved and in good condition;
- Anti-social behaviour taking place in the area with appellant advised no such anti-social behaviour taking place in the area,
- In relation to a reduction in the number of habitable houses or number of people living in the area, it is stated that no such reduction has taken place in the area.
- Legal tests in Section 5(1)(b)(ii) and Section 6(6) have not been satisfied properly cannot be classified as 'regeneration land', is not a vacant site and should not be entered on the VSR;

## 6.2. Planning Authority Response

A response from the Planning Authority to the appeal was received on 22 January 2018 and is summarised as follows:

- PA satisfied site meets the requirements of Section 5(1)(b)(ii) and Section 6(6) with attention drawn to photographs and reports attached (16<sup>th</sup> November 2017);
- PA consider vacancy and poor appearance of the site on which a substantial boarded up warehouse structure is located, significantly detracts from the amenity and character of the area, one of the key gateways into Bray;
- Evidence of anti-social behaviour on the site including graffiti and littering and appears east side of the site may have been used for rough sleeping;
- PA draw attention of Board to phrasing of Section 6(6) which does not require all three clauses are satisfied but rather a minimum of one of the clauses by reason of the inclusion of 'or' with the PA relying on section (a) & (b);
- Current use of the property as a private paid car park is unauthorised;

## 7.0 Assessment

7.1. 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.

7.2. 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.

7.3. 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.*

7.4. 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 do not challenge that the site has been vacant for idle for the 12 months preceding inclusion on the register. What they challenge is the second part of the requirement in relation to Section 5(1)(b) and that is that the site has adverse effects for which there are three parameters included within section 6(6) and consider that as they believe the site does not meet any of these requirements then it is not vacant.

7.5. The first matter is that the '*land or structures in the area were, or are, in a ruinous or neglected condition*'. In their appeal the appellants reference this subsection of the Act as stating: that land or structures in the vicinity of the site are in a ruinous or neglected condition which they consider is not the case in this instance with surrounding land and structures well preserved and in good condition. I would suggest that the appellant has misquoted and misinterpreted this section of the Act. The Act does not refer at section 6(6)(a) to '*in the vicinity of the site*'. The Act refers to land or structures in the area. The 'area' in this instance refers to the area of the site. Arguably if it were interpreted to be in the vicinity it would be somewhat ambiguous as the context of Section 5(1)(b)(ii) refers to the site and it is from this that the parameters in Section 6(6) are derived.

7.6. In relation to the consideration of Section 6(6)(a) there is a neglected structure on the site which is boarded up and is surrounded by land, particularly adjoining the public road which is overgrown and unkempt and subject to extensive littering. In this regard I would suggest that the land and structure which comprise the site are in a neglected condition.

7.7. In relation to Section 6(6)(b) '*anti-social behaviour was or is taking place in the area*' I note the unkempt nature of the site, the substantial littering and particularly broken

glass. In relation to the final consideration Section 6(6)(c), while 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 site meets the first and second parameters and given the inclusion of 'or' in the Act there is no requirement to meet all three.

## 8.0 Recommendation

8.1. I recommend that in accordance with section 9(5) of the Urban Regeneration and Housing Act 2015, the Board should confirm that the site measuring 0.3 hectares at Adelaide Road, Bray, Co. Wicklow was vacant or idle for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 27<sup>th</sup> July 2017 shall be deemed to take effect from that date.

## 9.0 Reasons and Considerations

9.1. 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 neglected condition of the site, which it is considered has adverse effects on exiting amenities and on the character of the area,

the Board considered that it is appropriate that a notice be issued to the planning authority to confirm the entry on the Vacant Sites Register.

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Una Crosse  
Senior Planning Inspector

May 2018