



An  
Bord  
Pleanála

## Inspector's Report ABP-302104-18

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<b>Type of Appeal</b>	Section 9 Appeal against section 7(3) Notice
<b>Location</b>	Magees Pharmacy, Enniskerry Co. Wicklow
<b>Planning Authority</b>	Wicklow County Council
<b>Planning Authority VSL Reg. Ref.</b>	VS/EK/04
<b>Site Owner</b>	Maeve Magee
<b>Planning Authority Decision</b>	
<b>Date of Site Visit</b>	22 October 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 on 19<sup>th</sup> June 2018, stating their intention to enter lands at Enniskerry town centre, 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.
- 1.2. The Notice was issued in accordance with the provisions of Section 5(1)(b) of the Act which refers to 'Regeneration'. The Notice was issued Maeve Magee, Magee's Pharmacy, Enniskerry, Co. Wicklow.

## 2.0 Site Location and Description

The site has a stated area of 0.18 hectares and is located to the rear of Magee's Pharmacy on the eastern site of the Square in Enniskerry and is densely covered with woodland. The site is bounded to the north by the Bray Road (R117) onto which it has frontage. To the east by an area of green space which is part of the Millfield Housing estate and to the south and west by properties with a mix of uses which address the Square and a laneway which runs from the Square to the east.

## 3.0 Statutory Context

### 3.1. URH ACT

- 3.1.1. Section 5(1)(b) of the Urban Regeneration and Housing Act 2015 states that in the case of a site consisting of regeneration land -
  - (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.

## 3.2. Development Plan Policy

3.2.1. The current Wicklow County Development Plan 2016-2022 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 stand alone 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.

3.2.2. The site is zoned town centre in the Enniskerry Town Plan 2016-2022.

## 4.0 Planning History

- 4.1. **Ref. 08/1048** – permission granted for a mixed use commercial and residential development of c.2,500 sq.m. This was extended until 2020 by way of Ref. 14/1761.

## 5.0 Planning Authority Decision

### 5.1. Planning Authority Reports

- 5.1.1. An initial report (Report/Phase 1) dated 25 January 2018 notes that the site is undeveloped wooded lands, zoned town centre and the type is noted as regeneration. The site area is noted as 0.18ha and in terms of adverse effects it is stated that this is a prominent site at the gateway to Enniskerry with extensive road frontage onto the regional road and town centre. It states that the lands are in a wooded condition and there is evidence of anti-social behaviour taking place thereon including dumping, littering and evidence of alcohol packaging. It concludes that the vacant, neglected condition of this has adverse effects on the character of Enniskerry town centre. It is recommended that letter 1 is issued (note to Board – this appears to refer to a Section 7(1) Notice). The planning history of the site is also noted following the recommendation. A Section 7(1) notice was issued by way of a letter dated 26 January 2018.
- 5.1.2. A second report (Report 2) approved on 8 June 2018 notes that no response was received to the Notice of Intent (section 7(1)(i)) issued within the 28 days with a request for an extension of same requested. The assessment states that the site has no buildings and is an overgrown wooded area. It states that the site is in a prominent location on the main access route into the town and that the lands are overgrown and there is evidence of anti-social behaviour taking place including dumping, littering and evidence of alcohol packaging. It is stated that the vacant neglected condition has adverse effects on the character of Enniskerry town centre. It is noted that there is a live permission on the site but that this does not negate from the implementation of the levy as the site is currently vacant and idle. It is recommended that the site is entered on the Register.

## **5.2. Planning Authority Notice**

- 5.2.1. A notice was issued by Wicklow County Council on 20<sup>th</sup> June 2018, stating their intention to enter lands at the Murrough, Wicklow Town, 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. The Notice of entry states that the site is being entered on the Register in accordance with Section 5(1)(b) of the Act. In addition it states that in accordance with Section 6(6) of the Act that the PA has determined that the site has adverse affects on the character of the area for the purposes of this Part of the Act because land or structures in the area are in a ruinous or neglected condition.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

The grounds of appeal are summarised as follows:

- Portion of submission lands located to rear of existing pharmacy are in commercial use and refer the Board to the lease agreements between the owner and 4 third parties;
- Currently active and established commercial use on part of the subject lands whereby tenants use a portion of the lands for storage, bin storage, recycling and storage of heating oil with landlord contractually obliged to make land available to the 4 tenants and therefore lands are not vacant or idle;
- Site has an extant planning permission for a mixed use development the permission for which has been extended based on Section 42(1)(a)(ii) whereby the PA were satisfied that there were a number of considerations of a commercial, economic or technical nature which were beyond the control of the applicant, in this instance, economic;
- Applicants willingness to extend permission is a positive indication of ambition to develop the lands with appellant intending to develop the site in the near future with entry on Register counterproductive with levy an additional burden which

may disrupt ability to enact permission and request ABP acknowledge the extant permission;

- Site has extensive constraints with obvious burdens in enacting the permission including the extensive established tree/vegetation cover and high probability of flooding;
- Number of difficulties associated with the development of the site due to uneven topography/ground levels and dense vegetation coupled with associated economic circumstances;
- Location of site within flood zone A & B requires further analysis and studies and may not be unreasonable to suggest that the lands would be unsuitable for development of any nature;
- Unreasonable to claim that these lands have adverse effects on existing amenities as the area does not attract anti-social behaviour or illegal dumping with the lands amplifying the setting of the immediate environment surrounding Enniskerry;
- Site is zoned Town Centre but are not identified as a key site in need of regeneration and not within designated Action Areas or Specific Local Objectives to direct development in Enniskerry;
- Enniskerry Village Enhancement Plan 2013 refers to vacant units in the town but not to any specific sites in need of regeneration.

## 6.2. Planning Authority Response

The response from the Planning Authority to the Appeal Submission is summarised as follows:

- PA satisfied that site is vacant and idle with no submission received within 28 days of notice of intent;
- PA welcomes owners stated intention to commence development but understand that future development proposals do not negate application of the levy and PA would remove the site from the Register in accordance with Section 10(1) if site no longer vacant or idle and understand this situation may arise where permitted development commences on site;

- Acknowledged site has constraints however this does not impact the development of the lands with a live permission on the site with area previously passing justification test as part of SFRA for the Bray Municipal District LAP 2018;
- Objectives relating to the VSL were incorporated unto the Wicklow CDP 2016-2022 during plan making process with no submission received from Department on process and considered objectives relating to same are to satisfaction of the Minister;
- Reference is made to Inspectors Report on ABP-300550-18 where reference is made to the process for including sites identified in need of regeneration;
- In relation to Section 6(6) the lands are overgrown and there is evidence of anti-social behaviour including illegal dumping and littering;
- The vacant neglected condition of the site has adverse effects on the character of Enniskerry town centre.

### 6.3. **Appellant Response to Planning Authority Response to Appeal**

The response from the Appellant to the Planning Authority's Response to the Appeal Submission is summarised as follows:

- Grounds of appeal in initial appeal document remain unchanged with WCC aware that there have been economic circumstances which have hindered the development of the lands with the appellant unable to secure funding until recently with the lack of funds a key factor in Extension of Duration of Permission;
- Intention of appellant to develop the site with the permission live until January 2020 and appellant currently in preparatory stages of implementing the permission as the vegetation can now be removed with delays as result of Section 40 of the Wildlife Act 1976 as amended which restricts works to such vegetation during the nesting and breeding season;
- King Tree Services procured to safely remove the trees in October 2018 allowing the development to be constructed;
- Consider site no longer vacant or idle as the permitted development has commenced.

## 7.0 Assessment

### 7.1. Introduction

7.1.1. 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.

7.1.2. The site must meet both tests and I will address each in turn.

### 7.2. Vacant or Idle

7.2.1. In terms of subsection 5(1)(b)(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 refer to their intention to develop, the existing permission and the constraints outlined in implementing same. In relation to intention to develop, I refer to 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. I would note that the spirit of the legislation provides for the activation of sites with planning permissions only facilitating same. I note from the appellant's response to the Planning Authority response to the appeal that King Tree Services have been procured to safely remove the trees in October 2018 allowing the development to be constructed and that they consider that the site is no longer vacant or idle as the permitted development has commenced. This work had not commenced on the date of my visit to the site.

7.2.2. The appellant also refers to a portion of the submission lands located to rear of existing pharmacy are in commercial use and refer the Board to the lease agreements between the owner and 4 third parties. They state that the lands are currently active and have an established commercial use on part of the subject lands whereby tenants use a portion of the lands for storage, bin storage, recycling and storage of heating oil with landlord contractually obliged to make land available to the



4 tenants and therefore lands are not vacant or idle. While photographs are included in the appeal of these 'uses' they are not annotated on a map and while these elements are on the site they can really only be described as ancillary elements to the overall commercial operations on the overall holding rather than a commercial use in their own right. I would suggest that the area of the site contained within the red line on the map attached to the notice has no existing use and having regard to the dense tree cover on same I consider that the site can be considered vacant or idle for the purposes of Section 5(1)(b)(i).

### 7.3. Adverse Effects

7.3.1. In order to be considered a vacant site under Section 5(1)(b) a site must also meet the test outlined in Section 5(1)(b)(ii) that being 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. This test is considered by reference to 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.*

7.3.2. Therefore these are the tests which determine whether or not the site being vacant or idle has adverse affects on existing amenities or reduces the amenity etc. The appellant does not specifically reference the condition of the site or the tests included in Section 6(6) however they state that it is unreasonable to claim that these lands have adverse effects on existing amenities as the area does not attract anti-social behaviour or illegal dumping with the lands amplifying the setting of the immediate

environment surrounding Enniskerry. The Planning Authority state that in relation to Section 6(6) the lands are overgrown and there is evidence of anti-social behaviour including illegal dumping and littering and that the vacant neglected condition of the site has adverse affects on the character of Enniskerry town centre

- 7.3.3. I will address each of the three tests in Section 6(6) in turn. The first matter 6(6)(a) is whether the land or structures in the area were, or are, in a ruinous or neglected condition. While the site has dense tree cover and is overgrown it is arguable that the sylvan character created would not be characterised as neglected creating a suitably sylvan context for the setting of the village. In longer range views coming into and leaving the village the site could not be described as appearing neglected. Undeveloped yes, but I do not consider that this would equate to neglected given these are mature trees. While I note there are a number of fallen trees on the site which have not been removed and which may create an impression that the site is overgrown I equally do not consider that it could reasonably be described as neglected. Therefore I consider that this first test has not been met.
- 7.3.4. The second matter 6(6)(b) refers to anti-social behaviour which was or is taking place in the area. As I outlined above, the appellant considers that the area does not attract anti-social behaviour or illegal dumping while the PA state there is evidence of anti-social behaviour including illegal dumping and littering. While I noticed a couple of cans in the undergrowth, there was no evidence of anti-social behaviour taking place nor was there evidence of illegal dumping other than a few random cans which were most likely thrown over the wall. Therefore, I do not consider that it is evident that anti-social behaviour has taken place and therefore it could not be considered to meet this test.
- 7.3.5. There is no evidence to address part (c). Given that the site is not required to meet all of the three tests, the necessary parameters of Section 6(6) (a) has been met and in this regard the site is a vacant site as defined by Section 5(1)(b).

## 8.0 Recommendation

I recommend that in accordance with section 9(5) of the Urban Regeneration and Housing Act 2015, the Board should cancel that the lands measuring 0.18 hectares at Enniskerry Town Centre, Co. Wicklow was vacant or idle for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 19<sup>th</sup> June 2018 shall be cancelled.

## 9.0 Reasons and Considerations

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 condition of the site, while extensively covered with trees and vegetation is not 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.

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Una Crosse  
Senior Planning Inspector

October 2018