



An
Bord
Pleanála

Inspector's Report ABP-302107-18

Type of Appeal	Section 9 Appeal against section 7(3) Notice
Location	Lands Measuring 0.25 ha. , Ashford House, Ashford, Co. Wicklow
Planning Authority	Wicklow County Council
Planning Authority VSL Reg. Ref.	VS/ASH/05
Site Owner	Dante Catering Ltd.
Planning Authority Decision	Place on Register
Date of Site Visit	22 October 2018
Inspector	Una Crosse

1.0 Introduction

- 1.1. This appeal refers to a section 7(3) notice issued by Wicklow County Council on 19th June 2018, stating their intention to enter lands measuring 0.25ha in Ashford, 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 is issued in respect of the provisions of Section 5(1)(b) of the Act. The Notice was issued to Dante Catering Ltd with the Director of Services Order stating that the Notice be served on 4 parties related to the Company.

2.0 Site Location and Description

The site comprises approximately 0.25 hectares of land within the settlement of Ashford. The site comprises part of the property within the Ashford House holding and includes an area which is grassed adjoining the car park of the property and the public road (R764) a dense hedgerow which divides the site and an area of ground behind same which extends towards the river bank.

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.

4.0 Planning History

4.1. No planning history outlined.

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 located off the junction of the R772 and the R763 (R764) to the rear of the Ashford House. The site is described as greenfield in nature appearing partially surfaced. The site is zoned town centre and the 'type' is noted as regeneration. The site area is noted as 0.25ha and in terms of adverse effects it is stated that the site is in a neglected condition and is located on the Main Street of the town in the primary

mixed use retail and commercial area at a very prominent location with significant street frontage and its condition and vacancy degrades the overall appearance of the area. It is recommended that letter 1 is issued. A Section 7(1) notice 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 issued within the 28 days. The assessment states that the site has no buildings and is hard surfaced but partially re-colonised with vegetation. It states that the site is in a prominent location on the main access route into the town and presents a poor impression of the town. Its vacancy is seriously degrading the overall appearance, amenity and vitality of the area. It is stated that the site is extremely likely to attract anti-social behaviour given its location and ease of access from the main street and that it appears to have attracted mobile/recreational vehicles in the past. It states that this site has previously been used for a traveller encampment with boulders placed on the perimeter to deter such use. It is concluded that the site is greenfield in nature and in a prominent location and at such a high risk of attracting anti-social behaviour that 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 19th June 2018, stating their intention to enter lands measuring 0.25ha at Ashford, 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:

- Appellant was not in a position to respond to the Notice of Intent as funding on the property has been reassigned to a vulture fund so essential for them to prioritise a further re-assignment of their funding and defer addressing potential listing on the VSR to this stage;
- Site is part of larger 0.98 holding and effectively forms the rear of the pub with 35m frontage to R764 along the north and average depth of c.70m with trees and hedges on the site effectively creating two parts to the property with the part to the south hidden from any public view with area to north visible to public and made of hardcore and grass and connected to the surface water drainage at Ashford House;
- Line of boulders initially placed to prevent unauthorised occupation of the lands but these have been slightly amended in two locations to provide access for larger vehicles to use the area to park and as a turning circle;
- Area of the site is also used on a regular basis by the Bray Harriers to park jeeps and horseboxes before setting off on their hunt every fortnight from November to March with letter and photographs attached confirming same and given site visits made during the week would not have been seen/been aware of this use with these vehicles reason for tyre marks on the site assumed by PA to be recreational/mobile vehicles;
- Area to rear or south was originally rear garden of former dwelling at Ashford house which was partly occupied until March 2018 and not accessible without prior authorisation;
- Trees and hedges are impenetrable with a fence and gate preventing access at the southern end of Ashford house with the PA not including any photos of this area in their reports and state that PA have erroneously claimed that it was not necessary to arrange a site visit;
- Section 5(1)(b) require both parts (i) & (ii) are satisfied including by reference to Section 6(6);

- Site is not a standalone site forming part of a larger site of 0.98ha purchased as a single entity confirmed by folio map attached:
- Ashford House complex is neither vacant nor idle with several active and vibrant businesses operating from the location including Ashford House and Ashford Oriental Restaurant and a pay and display car park;
- Site identified in the Notice (0.25ha) is not majority of the overall site with PA creating a site that does not exist and erred in placing it on the Register;
- Council's assessment and site visit only pertain to northern area of the site comprising 44% of the site included and not the majority;
- Even if determined that first test is met then must meet second test with Objective HD19 transposing Section 6(6) into the Development Plan;
- Rear portion of the site is not visible from any public vantage point so it cannot degrade the overall appearance of the area or present a poor impression of the town with this part of the site not considered by the PA as part of their assessment;
- While front area is visible from the R764 and less visible from R772 not accepted that it adversely affects the amenity and vitality of the area with area well maintained and not permitted to become unkempt to the detriment of Ashford House or the area as evidenced by photographs from April 2011 and recently;
- No evidence offered with regard to urban blight or decay;
- Anti-social behaviour defined with no evidence provided of anti-social behaviour taking place at the site with appellant insisting that there has never been any incidents of anti-social behaviour and attribute location of Garda Station opposite the site, open aspect of northern section of the site and high level of activity at Ashford House;
- Previous traveller encampment referenced by the Council occurred over 10 years ago and was resolved within hours with boulders placed to prevent future occurrences;
- Legislation requires that anti-social behaviour was or is taking place with Council's report speculating about the possibility of anti-social behaviour in the future with no evidence of previous or current anti-social behaviour as required by the legislation;

- Wheel marks are from use by customers of Ashford House and Bray Harriers;
- No reference or justification provided in respect of shortage of habitable houses or land suitable for residential use with land zoned for residential development in the Plan with further land as a Strategic Land Reserve and two large residential schemes under construction in Ashford;
- No market value of the site on the Register;

6.2. **Planning Authority Response**

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

- Having carried out investigations of the site the PA formed opinion that the lands do not form a functional element of the commercial development on adjacent lands although noted that they are in same ownership;
- No evidence of use associated with the operation on the lands to the east observed and no information provided by appellant when opportunity provided but note that lack of response to Notice of Intent was not held against the landowner as is suggested;
- Occasional use by the Bray Harriers described in the submission and has no relationship to the operation of Ashford House;
- PA assessed site in accordance with the criteria set out for regeneration land with the site located on a prominent location on the main access route entering and exiting the town and its vacancy and poor condition seriously degrading the overall appearance, amenity and vitality of the area;
- Site has also in the past attracted anti-social behaviour and given its location and ease of access from the main street there is a risk of such re-occurring;

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:

- Not possible for Council to access substantial portion of the site and factually incorrect to claim their investigations including inspections of the site as this can only refer to part of the site;

- Council now claim to rely on aerial photos but no aerial photos on file and if relied upon they should be available to the appellant;
- Council has attempted to segregate the lands with the overall site in single ownership and no physical boundaries demarcating the land;
- Front portion of the lands accessible to and used by patrons of Ashford House for parking larger vehicles typically jeeps with horseboxes and other large vehicles;
- Rear portion is fully screened from public views from R764 & R772 and frontage to the R764 not the main access route with majority of the site has not impact on the overall appearance, amenity and vitality of the area let alone seriously degrading;
- Site is maintained and not in poor condition or a condition that would seriously degrade the overall appearance, amenity and vitality of the area;
- Councils response to anti-social behaviour does not identify any behaviour currently taking place at the site with no definitive examples provided with Board invited to dismiss its wholly unsubstantiated statement that the site has also in the past attracted anti-social behaviour;

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**

In terms of subsection 5(1)(b)(i), that the site, or the majority of the site, is vacant or idle, while I note the grounds of appeal on behalf of the site owner which refer to occasional use as a meeting point for the Bray Harriers I do not consider that such

use would negate the application of the levy on the basis that the intent of the legislation is to bring forward land for the type of development intended by its zoning. In this regard, I consider that the site can be considered vacant or idle for the purposes of Section 5(1)(b)(i). I would note the contention from the appellant about the assessment of the site by the PA and the absence of any assessment of the larger portion of the site behind the hedgerow which is inaccessible. I will address this in the next section.

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 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.

7.3.2. Therefore these are the tests which determine whether or not the site being vacant or idle has adverse effects on existing amenities or reduces the amenity etc. and I will address each 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. Firstly, the appellant refers to the rear portion of the site which they quite rightly assert is not visible from any public vantage point and therefore cannot degrade the overall appearance of the area or present a poor impression of the town. As I outlined above they state that

this part of the site was not considered by the PA as part of their assessment. This part of the site, behind the mature hedgerow, is not visible and as the appellant points out cannot therefore appear neglected as it cannot be seen. Therefore this area of the site, which I would note would comprise the majority of the site subject to the Notice, could not meet the tests outlined in the Act. The Board could therefore cancel the Notice on this basis alone.

7.3.3. The appellants state that while the front area is visible from the R764 and less visible from R772 that it is not accepted that it adversely affects the amenity and vitality of the area with the area well maintained and not permitted to become unkempt to the detriment of Ashford House or the area. The PA in their response to the appeal state that the site was assessed in accordance with the criteria set out for regeneration land with the subject site located on a prominent location on the main access route entering and existing the town and its vacancy and poor condition seriously degrading the overall appearance, amenity and vitality of the area. I do not agree. The area while not developed does not have an appearance of being neglected. The boulders are relatively modest and the area is maintained. While the site might be described as being under-utilised and its development would create a different impression of this site when viewed from the public road, this is not the same as neglected which is the test in the Act. Therefore I consider that it cannot be considered to be neglected. In this regard I do not consider that this first test has 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. The PA in their response to the appeal state that the site has in the past attracted anti-social behaviour and given its location and ease of access from the main street there is a risk of such re-occurring. As pointed out by the appellant the Act refers to 'anti-social behaviour which was or is taking place in the area'. No evidence has been provided by the PA of anti-social behaviour which was taking place. For example, there are no reports from Gardai to inform same. I did not see any evidence to suggest that anti-social behaviour is taking place in the area and any tyre marks are explained by the use of the site for temporary parking. As the appellant noted the Act does not provide for anti-social behaviour which may take place in the future and therefore the contention of the PA that anti-social behaviour

may take place is not relevant. Therefore I do not consider that this test has been met.

- 7.3.5. There is no evidence to address part (c) however I would note there was building activity ongoing on residential sites in the Ashford urban area. Therefore I do not consider that the site has met any of the tests outlined in Section 6(6).

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 0.25 hectares at Ashford House, Ashford, Co. Wicklow was vacant or idle for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 19th 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,
 - (d) the majority of the site is not visible from the public road, and
 - (e) the condition of the visible area of the site, 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.

Una Crosse
Senior Planning Inspector

October 2018