



An  
Bord  
Pleanála

## Inspector's Report ABP-302108-18

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<b>Type of Appeal</b>	Section 9 Appeal against section 7(3) Notice
<b>Location</b>	Site at the Murrough, Wicklow Town, Co. Wicklow
<b>Planning Authority</b>	Wicklow County Council.
<b>Planning Authority VSL Reg. Ref.</b>	VS/W/05
<b>Site Owner</b>	Cable Rock Developments Ltd
<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 (although referred to as Section 6) 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.
- 1.2. The Notice is issued in respect of the provisions of Section 5(1)(b) of the Act which relates to regeneration lands.
- 1.3. The Notice was issued to 4 parties comprising the Secretary and 3 directors of Cable Rock Development Ltd.
- 1.4. This site was subject to an earlier Section 7(3) Notice issued on 21 March 2018 in respect of a larger area of the same overall site. A further notice was issued by Wicklow County Council under Section 6 dated 12 April 2018 removing the entry on the Register as it was stated that the PA was now of the opinion that the vacant site is less extensive than originally described in the letter dated 21 March 2018 (the Notice). It would appear that, while not referencing Section 10 of the Act, that it is this section that the PA have used to remove the entry on the Register as the Section 7(3) notice was not appealed and the removal was undertaken during the appeal period.
- 1.5. In the interest of clarity I would advise the Board that the PA reference for both the original entry on the Register 21 March 2018 which was removed and the entry subject of this appeal, 20<sup>th</sup> June 2018, are the same – VS/W/05.

## 2.0 Site Location and Description

The site in question comprises part of a larger complex of gabled warehouses located within a large site in the Murrough area of Wicklow Town. The site extends up to the roadway over the railway line and access road to the Port.

### 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 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 the following zones are included – TC, VC, PT, MU.

- 3.2.2. The site is zoned mixed use in the Wicklow Town – Rathnew Development Plan 2013-2019 and is located within an identified Opportunity Area.

## 4.0 **Planning Authority Decision**

### 4.1. **Planning Authority Notice**

- 4.2. 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 effects 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.

### 4.3. **Supporting Reports**

- 4.3.1. As I noted in the Introduction above, Wicklow County Council originally placed the site on the Register on 21 March 2018 later removing same on 12 April 2018 on the basis that part of the site should not have been included. The original entry of 21 March 2018 was accompanied by a report dated 28 February and referred to as 'Report No.2' which outlined the correspondence history and in particular the landowner report to the Notice of Intent (Section 7(1) Notice). This report of 28 February 2018 states that the author is satisfied that at least 64% of the site can be considered vacant or idle with c.1.18ha of buildings stated to be vacant and 0.7ha stated to be occupied.
- 4.3.2. What appears to be Report No. 1, entitled Vacant Site Levy Investigation preceded this report and appears to inform the issuing of the initial Section 7(1) Notice. It describes the site location, c.860m north/northwest of the centre of Wicklow Town and describes it as a large single storey industrial/warehousing unit (the former Veba factory). It states that the southern portion of the site appears to be active with a number of businesses in operation however the northern sections of the site appears

to be vacant. The zoning is described as mixed use and the type is described as regeneration. The area of the site is stated as 0.95 hectares and in terms of vacancy notes that parts of the overall site have businesses operating in them however there are units vacant towards the northern end of the site. It states that access to the site was not available at the times of inspection and therefore the level of vacancy cannot yet be confirmed. In terms of Section 5(1)(b)(ii) (adverse effects) it states that it is considered that the site being vacant or idle has adverse effects on existing amenities quoting Section 5(1)(b)(ii). It states that the site is located in an opportunity area in the Wicklow Town – Rathnew Development Plan 2013-2019 and that the redevelopment and enhancement of the Murrough area is a key objective of the plan and therefore it is considered that this land is not in use should be brought forward for development.

- 4.3.3. The Notice dated 12 April 2018 to 'Remove' the original site from the Register was accompanied by a report dated 11 April 2018 and referenced as 'Report No. 3' which references representations made to the Council on behalf of the owner. It is stated that following further investigation it is acknowledged that the vacancy of the site should have taken car parking into account when determining vacancy levels and provides a table outlining a calculation of car parking spaces with 86 spaces allocated to the units that are not vacant. In the recommendation it is stated that the issue is the vacancy of the site but given an error in the amount of vacant buildings/land on the site and it is recommended sending the landowners a revised map advising them that the site will be taken off the Register for a period of 28 days in order to allow them to send in a further submission on the revised boundary and following this that it is intended to place the site back on the register subject to a review of any submissions. A letter was issued with the Notice to remove, dated 12 April 2018, outlining same and also included a map which outlined the areas of the site to be excluded from the 'vacant site'. The appellants responded to same on 9<sup>th</sup> May 2018 stating that the lands comprise building currently occupied and in use and that the site outlined in the Map attached to the correspondence does not adequately show or distinguish any lands and/or areas connected to buildings occupied and in use whether necessary for the proper management, maintenance and/or future operation of these buildings.

- 4.3.4. A report referenced as 'Report No. 4' and dated 11<sup>th</sup> May 2018 was prepared in respect of the site and outlines the process to date in respect of the site and correspondence received from the owner. While the report is dated 11 May 2018 it references a site visit made on 14<sup>th</sup> May 2018 and states that while entry was not possible to the northern buildings, that the author was able to view inside the buildings through the windows and the opinion on the vacancy levels of the property remains as per report no. 3 that the majority of the site is vacant. Reference is also made to rates paid for each of the buildings on the site. It states that vacancy of the site can be looked at in two ways. Firstly, that c.28% of the site area including car parking is occupied meaning the majority of the site is vacant or secondly, that c.35% of the floor area of the buildings are occupied meaning the majority of the footprint of the building on site are vacant. It is stated that the landowner has not provided any further information as part of their submission of 9<sup>th</sup> May. The recommendation states that the majority of the site is vacant as per Section 5(1)(b) and the site meets the criteria and the whole site should be placed on the Vacant Site Register. There are a number of amendments and removals from the wording for the proposed letter with the revisions stating that the Notice refers to the site defined by the Map attached measuring 1.88 hectares. The report is signed by the author on 25 May 2018 and co-signed on 28 May 2018.
- 4.3.5. An additional report prepared by the Director of Services dated 19<sup>th</sup> June 2018 stated that having reviewed report no. 4 prepared on 11<sup>th</sup> May 2018 that in consultation with the Chief Executive recommends that the vacancy of the subject site should be reduced to the area indicated in red in the map which is outlined in the report with the section of the site considered to be vacant measuring 1.8 hectares.

## **5.0 The Appeal**

### **5.1. Grounds of Appeal**

An appeal was received from the owner and the grounds are summarised as follows:

- Lands in question consists of the old Veba factory and its current use is as a light industrial estate. There are a number of units occupied and those that are vacant have been and continue to be marketed for letting;

- Section 5(1)(b)(i) requires that the site or majority of the site must be vacant or idle with site outlined in red in attached map which has an area of 30,640 sq.m;
- Notice from WCC shows a portion of the entire site with the appellants map outlining this area on their map in red and green with the red area comprising vacant buildings and has an area of 10,714 sq.m;
- The green area (area of 7,495 sq.m) consists of parking and amenity areas enjoyed by the entire site and is not exclusive to the red tinted area because the green area is used by tenants on the site and is not vacant or idle and should not be included in the WCC calculations;
- Therefore the area in red on the map attached with the appeal totals 10,714 sq.m and comprises 34.97% of the entire site of 30,640sq.m and is not the majority of the site so does not fall into the meaning of a 'vacant site' under the Act.

## 5.2. Planning Authority Response

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

- States entire site is 3.13ha, contains a large industrial building measuring 1.85ha divided into 10 units of varying size and an office and provides a diagram of same;
- Acknowledged that the southern section of the industrial building is currently occupied by various business which use the curtilage for parking but that this does not appear to be the case at the northern section of the site;
- Noted that the appeal to the Board does not argue the vacancy of that portion of the building but rather the vacancy of the curtilage but does not indicate how that portion of the site was not vacant or idle;
- Acknowledged that this area is not exclusively for the use of the northern section of the building but that on a number of visits to the site, unlike the southern area, the area was not in use for parking, storage or any uses associated with the use of the industrial buildings and offices and is therefore considered vacant;

- Northern section of the site is considered vacant and idle and therefore only this section, measuring 1.8ha and not the entire site has been considered under the Act and that which is outlined in red on the map attached to the Notice is what is considered vacant;
- In relation to tests relating to adverse effects in Section 6(6), on the outside the site is in a ruinous and neglected condition causing a visual blight in the area, vegetation is growing through the hard surface in places with steel and rubbish littering the curtilage of the building;
- Northern section of the building was subject to fire damage last December and the roof of the building is leaking, inside of buildings contain old and used building materials and has been subject to anti-social behaviour and therefore meets criteria of Section 5(1)(b) and Section 6(6);

### 5.3. **Appellant Response to Planning Authority Response**

A response was received from the appellant to the planning authority response to the appeal and it is summarised as follows:

- North end of site referred to by WCC is not vacant as the area is designated for large articulated trucks to load and unload goods through the loading bays which area only located on this north end face of the main building and this is the only area where large trucks can manoeuvre;
- It is regularly used by articulated container trucks with no other facility to unload/load containers on the site other than by these loading bays and they service the entire site and without same, site would not be viable;
- Access has been reserved by tenants of the building to use the eastern most loading bay situated on the north face of the building with image attached showing the location of same;
- Building is industrial dating back to mid-1900's and it and its surroundings are typical of this type and age of structure;
- It is not in a ruinous state with tenants occupying the building and it is fit for their purpose;
- WCC refer to small vegetation growing in the curtilage of the building and being a blight and attach a selection of images showing overgrown invasive vegetation



location on the WCC lands surrounding the property and growing over and through the perimeter fencing which is the real blight.

- In terms of littering, appellants regularly pick up and dispose of any rubbish occurring on the property and if there is any steel on the site it belongs to the biggest tenant who are steel suppliers and who regularly place steel outside as they consolidate loads for delivery and they have agreement on same;
- Fire in one of the bays of the building melted some of the plastic roof lights with same being repaired as well as other maintenance work;
- Property is constantly being marketed with a further 100m<sup>2</sup> recently let indicated in violet in attached drawing with same located in the area where the fire melted some of the rooflights;
- Also in discussion for a further large rental of space at the same northern end with upsurge in enquiries about space;
- In addition to use of the units, tenants required the use of the full curtilage of the property without restriction;

## 6.0 **Assessment**

### 6.1. **Introduction**

6.1.1. 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.

These tests will be addressed in turn.

### 6.2. **Vacant or Idle**

6.2.1. 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 states that there are a number of units occupied and those that are vacant have been and continue to be marketed for letting with reference to increased enquiries and discussion about increased

rental of space at the northern end. When I visited the site one of the units referenced as vacant in the appeal response from the PA is now in active use with a number of vans outside of same loading material being stored into the unit. This would appear to correspond to Unit 6 on the PA map included in their response and is located opposite the office building. I note from the PA photographs that this unit was closed on the day of their visit to the site however the unit appears to have been used for storage. While this unit is now in use the Board are required to address the use of the units in the 12 months prior to the site being placed on the Register, in this case the 12 months prior to 20<sup>th</sup> June 2018 and therefore the use currently on site is not relevant for the purposes of this appeal. In this regard the units within the red line boundary were vacant up to 20<sup>th</sup> June 2018. However, I would note that the use of this and other units within the site may be addressed under Section 10 of the Act.

6.2.2. In relation to the use of part of the site included within the red line for parking and amenity areas which the appellant states are enjoyed by the entire site. The area to the north of the site with the loading bays would not appear to be in active use and while the hardstanding may be used as a turning area this would not in my opinion be sufficient to negate vacancy on the site subject of the Notice. Therefore, I consider that the site was vacant or idle for the 12 months preceding the entry on the Register and therefore is considered vacant for the purposes of Section 5(1)(b)(i).

### 6.3. **Adverse Effects**

6.3.1. 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.

6.3.2. 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.*

- 6.3.3. In relation to subsection (a) *land or structures in the area were, or are, in a ruinous or neglected condition*, I would note that in this instance the site includes land and structures. In relation to the structures on site, the appellant states that the building is an industrial structure dating back to the mi-1900's but that it is not in a ruinous state which is occupied and is fit for purpose. The buildings themselves as pointed out by the appellant are of their time however, while maintained there was evidence of remaining damage to the roof and the loading bays on the northern elevation are in a poor state of repair. I consider that the buildings could be described in this instance as neglected.
- 6.3.4. In terms of the land the PA claim in their response to the appeal that on the outside the site is in a ruinous and neglected condition causing a visual blight in the area. They state that vegetation is growing through the hard surface in places with steel and rubbish littering the curtilage of the building. In response the appellant attaches a selection of images showing overgrown invasive vegetation located on the WCC lands surrounding the property and growing over and through the perimeter fencing which is the real blight. While I acknowledge the appellants argument that the lands in WCC ownership are assisting at the very least with the overgrown vegetation, the lands in question do appear overgrown. While overgrown does not necessarily translate to neglected, I also noted an area of dumping including furniture to the north of the site and therefore the overall impression is one which appears neglected. Therefore I consider that the site would meet the test outlined in Section 6(6)(a)
- 6.4. In relation to part (b) that *anti-social behaviour was or is taking place in the area*. The PA state that the northern section of the building was subject to fire damage last December and the roof of the building is leaking which inside of buildings contains

old and used building materials and has been subject to anti-social behaviour. It is not clear if the fire damage was as a result of anti-social behaviour with no evidence to support same. I would note a photograph of graffiti on the underside of the Bridge to the north of the site however this is not within the curtilage of the property. Apart from the littering outlined in the section above, I did not witness any evidence of anti-social behaviour on the site and I would note that the site is well secured with fencing and therefore I do not consider there is sufficient evidence to suggest that the site would meet the test in Section 6(6)(b).

- 6.5. 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 urban area I do not consider that it would be reasonable to consider that such a reduction is the case. However, given that the test in Section 6(6)(a) is met I consider that the site meets the tests outlined in Section 5(1)(b)(ii).

## 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 Vaha Site at The Murrough, Wicklow, Co. Wicklow was vacant or idle for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 20<sup>th</sup> June 2018 shall be confirmed.

## 8.0 Reasons and Considerations

- 8.1. 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 and structure thereon, which it is considered has adverse effects on existing 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

October 2018