



An  
Bord  
Pleanála

## Inspector's Report ABP-302110-18

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| <b>Type of Appeal</b>                   | Section 9 Appeal against section 7(3)<br>Notice                          |
| <b>Location</b>                         | Junction Of Main Street, Sea Road an<br>Lott Lane, Kilcoole, Co. Wicklow |
| <b>Planning Authority</b>               | Wicklow County Council   |
| <b>Planning Authority VSL Reg. Ref.</b> | VS/K/04  |
| <b>Site Owner</b>                       | Douglas Hatton Developments Ltd.   |
| <b>Planning Authority Decision</b>      | Place on Register  |
| <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 26<sup>th</sup> June 2018, stating their intention to enter lands measuring 0.55ha at the junction of Main Street, Sea Road and Lott Lane, Kilcoole, 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 Douglas Hatton Developments Ltd. with the Director of Services Order stating that the Notice be served on 5 parties related to the Company.

## **2.0 Site Location and Description**

The site comprises a corner site at the junction of Main Street, Sea Road and Lott Lane in the centre of Kilcoole village adjoining a traffic controlled junction and a laneway. The site has a stated area of 0.55 hectares and contains the remnants of some former structures.

## **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.

Kilcoole is a Settlement Zone 3 where TC and VC are included for the purposes of the Act. The site is zoned TC in the current Plan.

### 4.0 Planning History

**Ref. 17/1485 (ABP-301160-18)** – Permission refused by Wicklow County Council for a Mixed use development comprising two blocks consisting of commercial/cafe/retail, 6 apartments, car parking, cycle parking, vehicular and pedestrian access and site development works. The decision was appealed to the Board with a decision awaited.

## 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 a corner site at the junction of Main Street, Sea Road and Lott Lane and was formerly occupied by a shop called 'Urells' and subsequently a café with the building damaged by fire a number of years ago and then demolished. The site is zoned town centre and the 'type' is noted as regeneration. The site area is noted as 0.56ha 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 (note to Board – this appears to refer to a Section 7(1) Notice). A Section 7(1) notice (although not called this) issued by way of a letter dated 26 January 2018.
- 5.1.2. A second report (Report 2) approved on 25 June 2018 notes that a response to the notice of intent was received. The assessment states that the submission from the landowner confirms that the site is vacant and has been subject to anti-social behaviour. It notes that the key objection from the landowner appears to be the delays in development of the site caused in the opinion of the landowner by the PA and actions undertaken by the WCC regarding the Derelict Sites Act. It is stated in response that the landowner has made one application for permission under Ref. 17/1485 which was refused in February 2018 and appealed. Claim that site is vacant because of PA delays is irreverent and inaccurate as there is no obligation to seek pre-planning discussions and secondly there was permission on the site (lapsed) which would have provided an indication of what was possible to any professional. In addition it is stated that in response to the pre-planning meeting sought that an email was sent to the appellant apologising for the delay and outlining advice with an application not received for 10 months.
- 5.1.3. The report outlines that the site is vacant and idle and in terms of Section 6(6) states that there was a structure on the site up to 2009 which were demolished following

fires on the site. It is noted that there are walls at perimeter and floor slab in situ on the site and are in a ruinous and neglected condition with the site very overgrown and unkempt and does not have the appearance of being maintained. It states that there is evidence of anti-social behaviour in the form of dumping/littering and graffiti noted with a considerable amount of alcohol bottles and cans observed on site and given the ease of access off the Main Street notwithstanding the current fencing which has been damaged before and that the site is likely to continue to attract anti-social behaviour of this nature. It states there is no evidence to show that there has been a reduction in the number of habitable houses in the area. It is recommended that the site is entered on the Register as it is vacant in a ruinous/neglected condition and is attracting anti-social behaviour.

## **5.2. Planning Authority Notice**

- 5.2.1. A notice was issued by Wicklow County Council on 26<sup>th</sup> June 2018, stating their intention to enter lands measuring 0.55ha at junction of Main Street, Sea Road and Lott Lane, Kilcoole, 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 (a) the land or structures in the area are in a ruinous or neglected condition and (b) there is evidence of anti-social behaviour in the form of dumping/littering and graffiti taking place on the site.

## **6.0 The Appeal**

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

The grounds of appeal are summarised as follows:

- As detailed in previous correspondence fencing erected on two occasions in an attempt to deter anti-social behaviour but cannot control the behaviour of those who wish to behave this way;

- Trying to get permission on the property for a considerable length of time which has been delayed not through appellants fault;
- Attach previous correspondence from the Council stating they intend to place the site on the Derelict Sites Register to which a response was provided outlining that a pre-planning meeting with the Council had been sought (letter from appellants agent seeking meeting attached – dated 28<sup>th</sup> November 2016);
- Permission sought has been refused permission by Council and under appeal;
- At a complete loss as to what WCC expect as cannot develop the site without permission with site secured and tidied up as much as possible with aspects of anti-social behaviour not possible to control;
- Intention would have been that site would be developed and occupied by early 2019 but attempts thwarted and therefore unfair for the site to be placed on the Registers mentioned;

## 6.2. **Planning Authority Response**

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

- Key objection from the landowner appears to be the delays in development the site caused by the PA;
- No obligation to seek pre-planning discussions with permission previously sought on the site which would have provided an indication of what was possible to any professional.
- In response to the pre-planning meeting sought that an email was sent to the appellant apologising for the delay and outlining advice with an application was not received for 10 months.
- Reference made to Derelict Sites Act with site previously on the Register and removed in 2012 with a notice of intent issued again in 2017 but works completed to satisfaction of the PA with no further action taken with the site not currently on the Derelict Sites Register;
- Site is vacant and idle and in terms of Section 6(6) states that the site is in a neglected and ruinous condition surrounded by visually discordant fencing and hoarding which is not being maintained and is located on the Main Street in the

town in the primary mixed use area at a prominent location with significant street frontage, its condition and vacancy degrades from the overall appearance.

- Former structure on the site removed but walls at perimeter and floor slabs are still in situ and in a ruinous and neglected condition.
- The site is very overgrown and unkempt and does not have the appearance of being maintained.
- Evidence of anti-social behaviour in the form of dumping/littering and graffiti noted during investigations with a considerable amount of alcohol bottles and cans observed on site and given the ease of access off the Main Street notwithstanding the current fencing which has been damaged before, the site is likely to continue to attract anti-social behaviour of this nature.
- While the intention of the appellant to develop the site is acknowledged these actions do not negate the application of the levy;

### **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:

- Outlines the contact made with the PA with dates provided and letters attached;
- Fencing erected on a number of occasions which was damaged and replaced with steel fencing;
- Received call from WCC stating site will be entered on Derelict Sites Register to which a response was provided outlining attempt to get a pre-planning meeting;
- Email received regarding pre-planning only after response was submitted to the Derelict Sites Register;
- Permission sought in December 2017 in the hope of a straight forward process;
- Ask why if pre-planning not provided where a lapsed permission exists this is not stated on the website or could some of the calls not been returned to state same;
- Statement that lapsed permission should inform development differs to decision to refuse issued from Council on development similar to lapsed and requested pedestrian link through the site which was not a feature of the previous permission;

- Question appropriateness of pedestrian link through the site as provides an open invitation for anti-social behaviour to take place and considerable change in levels;
- How the refusal reason, that proposal does not reflect character of the area, can be addressed in the absence of any guidance is questioned.
- Time lapse between email from WCC and submission of application due to momentum being taken out of process and commencement opportunities;
- Noted that when site was entered on Derelict Sites Register in 2011 it was not owned by appellant;
- Fencing around the site is tidy, in good repair, totally intact and free from graffiti with works to clear the site to be undertaken when the construction commences;
- Steel fencing erected has not been previously damaged nor is there any graffiti with previous fencing removed and litter on site disposed of;
- Part of correspondence received on 26<sup>th</sup> January 2018 from WCC was missing;

## 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 would note that the planning history of the site, the intention to develop and current application/appeal or implied delays in same are not relevant to the consideration of vacancy on the site. Permission, while a necessary part of the development process, only facilitates development and the intention of the legislation



is to activate development on sites. The site does not have any use as is clear from the site photos attached and therefore 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 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. The first matter 6(6)(a) is whether the land or structures in the area were, or are, in a ruinous or neglected condition. The PA state that in terms of Section 6(6) that the site is in a neglected and ruinous condition surrounded by visually discordant fencing and hoarding which is not being maintained and is located on the Main Street in the town in the primary mixed use area at a prominent location with significant street frontage, its condition and vacancy degrades from the overall appearance. They refer to the former structure on the site being removed but walls at perimeter and floor slabs are still in situ and in a ruinous and neglected condition. The site is very overgrown and unkempt and does not have the appearance of being maintained.

7.3.3. I will address the matter of the hoarding in the context of anti-social behaviour in the next section but I would suggest that it is quite evident from the photographic

evidence which I have attached that the site retains elements of the previous structure which I consider can be described as being in ruinous condition given only elements of the structure remains. The site is overgrown with vegetation and together with the remaining walls which are ruinous elements of the previous structure on the site and the industrial nature of the fencing the site does give the impression of being neglected. In this regard I do consider that the site would comply with Section 6(6)(a) of the Act.

7.3.4. The second matter 6(6)(b) refers to anti-social behaviour which was or is taking place in the area. The appellant states that fencing has been erected on two occasions in an attempt to deter anti-social behaviour but cannot control the behaviour of those who wish to behave this way. The PA state that evidence of anti-social behaviour in the form of dumping/littering and graffiti noted during investigations with a considerable amount of alcohol bottles and cans observed on site and given the ease of access off the Main Street notwithstanding the current fencing which has been damaged before, the site is likely to continue to attract anti-social behaviour of this nature. While future behaviour is not referenced in Section 6(6)(b) of the Act it is quite clear that anti-social behaviour has taken place and the appellant does not refute same. While the appellant is endeavouring to protect the site from such behaviour and this has to be acknowledged it is clear that such behaviour has and is taking place and therefore the second test in Section 6(6) has been met.

7.3.5. There is no evidence to address part (c) however given that the site is not required to meet each of the three tests, the necessary parameters of Section 6(6) (a) and (b) have 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 confirm that the lands measuring 0.55 hectares at junction of Main Street, Sea Road and Lott Lane, Kilcoole, Co. Wicklow was vacant or idle for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 26<sup>th</sup> June 2018 shall be confirmed.

## 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 neglected condition of the site and the ruinous structures thereon, which it is considered has adverse effects on existing amenities and on the character of the area and the anti-social behaviour which has taken place,
- 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

November 2018