



An
Bord
Pleanála

Inspector's Report ABP-302146-18

Type of Appeal	Section 9 Appeal against section 7(3) Notice
Location	Lands measuring 0.17ha to west of Main Street, Kilcoole, Co. Wicklow
Planning Authority	Wicklow County Council
Planning Authority VSL Reg. Ref.	VS/K/03
Site Owner	Laurence Keegan
Planning Authority Decision	
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 4th July 2018 under Reference VS/K/03, stating their intention to enter lands measuring 0.17ha west of Main Street, 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 Laurence Keegan.
- 1.3. I would note as outlined below in Section 5 (Planning Authority Decision and Reports) that Reference VS/K/03 initially comprised one site comprising c.2.75 hectares. Following the response to the Notice of Intent, the PA omitted a large area of land to the rear of the site and defined two sub-sites within the overall site comprising two plots of land, Plot A and Plot B which were placed on the Register. The subject site which comprises 0.17ha and which is delineated as Site A in reports and maps and Site B which comprises a site measuring 0.52 ha also located to the west of Main Street, Kilcoole but to the south of the appeal site.
- 1.4. I would note that while both sites A & B are included under Reference VS/K/03, two separate Notices were issued accompanied by the two respective maps. The appeal documents received include the Notice and Map relating to Site A only and therefore I do not intend to deal with Site B as part of this appeal.

2.0 Site Location and Description

This site comprises a rectangular shaped area of ground measuring 0.17 hectares and which addresses Main Street in Kilcoole with a fenced area along the boundary with the footpath. An entrance from Main Street facilitates access into the site which is used as a car park and which has a gravelled surface.

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. ABP-302552-18 – a planning application was received by the Board under the Strategic Housing Development provisions from Kimpton Vale Ltd for 267 no. residential units (225 no. houses, 42 no. apartments), 5 no. retail units, 4 no. office units, childcare facility, innovation hub and associated site works at Bullford, Kilcoole, Co. Wicklow. The subject site is located within the application boundary.

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 comprises three areas. Part (a) is described as an area of 0.18ha adjoining Kilcoole Main Street south of The Molly's pub and which is laid and used as an unauthorised paid car park. Part (b) is described as being further south, also adjoining the Main Street and occupied by a number of derelict roofless cottages. Area (c) is described as the remaining lands, to the west of Main Street which are open fields in agricultural use. The site area is noted as 2.795 hectares with a town centre zoning and the type of Notice under the Act, regeneration. In terms of adverse effects it is stated that the site is in a neglected condition with a number of derelict or ruinous structure thereon and is located on the Main Street of the town in the primary mixed use retail and commercial area at a 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 29 June 2018 includes a map of the lands dividing the original site into 3 plots – A, B & C. It states that a response to the notice

of intent was received and details same which outlines that part of the site is used as a car park and part is used for agriculture. The report outlines a licence arrangement for the use of the car park for a period of a number of years but that the license expired in November 2010 and the use as a car park after this time was without any permit with the ongoing use unauthorised and therefore does not negate the levy.

5.1.3. It states that for the purpose of VSL that agricultural use is not considered an active use as per the Circular. It further states that having inspected the lands that area (b) is not in use for farming and is completely overgrown and area (c) appears to be fallow but corn was evident. The report then addresses each element of the site deeming each to be vacant or idle. It then addresses the tests under Section 6(6) for the purposes of Section 5(1)(b)(ii) noting that overall that the lands are in a neglected condition with derelict or ruinous building, large areas overgrown, unkempt etc and considers that the condition and vacancy degrades the appearance of the town. It then addresses each of the parts in terms of ruinous and neglected condition noting that parts (a) and (b) are ruinous and neglected and part (c) which is being used for agriculture is not. Anti-social behaviour is noted on each of the 3 parts. In relation to section 6(6)(c) it is stated that there is no evidence to show a reduction in the number of habitable dwellings in the area.

5.1.4. The report then recommends that Areas (a) and (b) be included on the Register. It is stated that it is not recommended that area (c) is included even though it meets at least one of the three criteria, with only one required to be met, as these lands are not highly visible from the Main Street and having regard to previous Board decisions regarding similar lands in Newtownmountkennedy. It states that the sites recommended for inclusion are vacant and in a ruinous and neglected condition and are attracting anti-social behaviour and therefore sites (a) and (b) should be included and it states 'please record these entries as two separate sites as per the attached maps and send two separate notices under Section 7(3) – Ref. VS/K/03(a) and VS/K/03(b).

5.2. Planning Authority Notice

- 5.2.1. Two Section 7(3) notices were issued by Wicklow County Council on 4th July 2018, stating their intention to enter lands included as Area (a) measuring 0.17ha to west of Main Street, Kilcoole, Co. Wicklow and Area (b) measuring 0.52ha located to west of Main Street, 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. While recommended that references VS/K/03(a) and VS/K/03(b) be used both Notices refer to Refencece VS/K/03 but have the maps associated with the individual areas (a) and (b) attached. The Notices of entry both state 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:

- Car park is used for short term car parking for up to 3 hours by local businesses and residents and for time in excess of 3 hours by means of pay and display;
- If appeal fails left with no option but to close the car park and thereby discommode residents and business people who use the facility;
- Letter from appellant to WCC following receipt of Notice of Intent attached noting use of car park and fencing put in place by WCC;
- Appeal accompanied by Notice of Entry relating to site of 0.17ha and map with Area A in red.

6.2. Planning Authority Response

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

- In 2008, when WCC were carrying out road and footpath improvement works, given works would result in loss of car parking, WCC entered into a temporary arrangement by way of license for the public to temporarily use these lands for car parking for the duration of the works with WCC spending some money to improve the surface and erect fencing as part of the licence;
- Licence initially for one year and extended for a second expiring in November 2010 with the development (both works and material change of use) would have given licence agreement constituted exempted development under Section 4(1)(b) or (f) of Act;
- Post Nov. 2010 any use of the lands as a car park (free or otherwise) has been without agreement or approval and is no longer exempt and comprises a use being carried out by the landowner of his own volition but without any permit;
- While acknowledged that site is in use as a car park, understand that the PA cannot take unauthorised development or use into account for the purposes of vacancy and it would not negate the application of the levy and site is vacant under Section 5(1)(b);
- In relation to the tests in 5(1)(b)(ii) and Section 6(6) the land is laid out with rough hard surface with timber fencing along the road edge and planting along same but is not being well maintained with vegetation growing through the hard surface and parts of fencing collapsing with vegetation wild and unkempt around western and southern site boundaries;
- Considerable littering and waste dumping occurring in the lands along the southern boundary in particular in vicinity of clothing bank and containers;
- Given ease of access off the Main Street and open nature of the site is it extremely likely to continue to attract anti-social behaviour of this nature;
- Request Board uphold WCC decision to place on Register;

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:

- True that arrangement was entered into with Council in 2008 for the use of the car park to facilitate parking of car, machinery/material for the appointed contractor who was carrying out the street improvement works in Kilcoole Village;
- Should be noted that lands purchased in 1998 and at this stage the car park was in use by residents and businesses and has continued up to the present day without any objection from WCC;
- Should also be noted that it was in use as a car park before it was purchased (by the appellant) and understand that at this stage it does not require permission due to the extensive period that it has been operating as a car park;
- Consider it unreasonable to remove the facility from the residents and business people and note that car park is kept clean and tidy by residents associations with a clothes bank also provided.

7.0 **Assessment**

7.1. **Introduction**

7.1.1. As I outline elsewhere in this report, two Section 7(3) notices were issued in respect of lands owned by the appellant which were originally included as one site. Following the submission in response to the Notice of Intent it was decided not to include part of the site and to create two parts to the site, Area (a) and Area (b) with Notices issued on each part. The appeal received includes the Notice of Entry and map relating to Area A and the grounds of appeal do not reference Area (b). Therefore this assessment relates to Area (a) and the Notice of Entry on same only.

7.1.2. 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.

7.1.3. 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 the use of the site as a car park. The history of the use of the car park has been outlined by the Planning Authority and the appellant. The PA state that the use is unauthorised and the appellant claims that it does not require permission due to the extensive period that it has been operating as a car park. While the use may be ongoing for an extensive period and beyond the statute of limitation this does not authorise the use. Section 6(7) of the Urban Regeneration and Housing Act 2015 states that in determining for the purposes of this Part whether a site was vacant or idle for the duration of the 12 months concerned a planning authority, or the Board on appeal, shall not have regard to any unauthorised development or unauthorised use. Therefore notwithstanding that the use has been going on for an extensive period, it does not authorise the use and therefore as per Section 6(7) of the Act, the unauthorised use cannot be considered to negate vacancy. 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 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 PA outlines in considerable detail the condition of the site and examines the tests included in Section 6(6). I would note that the PA state that meeting any one of the test is sufficient and I would refer the Board to the fact that there is no 'and' between subsections (a) and (b) and therefore if either part is met it should arguably suffice. There is I would note an 'or' between subsections (a), (b) and (c).
- 7.3.3. 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 the land is laid out with rough hard surface with timber fencing along the road edge and planting along same but is not being well maintained with vegetation growing though the hard surface and parts of fencing collapsing with vegetation wild and unkempt around western and southern site boundaries. I would consider that the site is relatively well maintained with a fence along the boundary and some planting. While there is some overgrown vegetation, the surface is gravelled and level but there are no ruinous structures on the site. While the site may be under-utilised and located in an area where its development would improve the streetscape I do not consider that it could be described as ruinous or neglected which is the test set out in the Act. I would note that on the day of my visit that there were containers stacked on the site. The PA reference littering on the site in the vicinity of the recycling containers but I did not notice same which may provide that it is maintained on a regular basis. The test in the Act is specific and in this regard I do not consider that the site could be described as neglected.
- 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 state that given ease of access off the Main Street and the open nature of the site that it is extremely likely to continue to attract anti-social behaviour of this nature. It would appear that this relates to the littering witnessed in the vicinity of the recycling bins. I do not consider that this would constitute anti-social behaviour with the Act referring to such behaviour which was or is taking place

rather than what may happen in the future. I do not consider that the site would meet this test.

- 7.3.5. There is no evidence to address part (c). Therefore, I do not believe that any of the tests in Section 6(6) have been met and in this regard the site is not a vacant site as defined by Section 5(1)(b)(ii).

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 0.17 hectares (Area A) to the west of Main Street, Kilcoole, Co. Wicklow was vacant or idle for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 4th July 2018 shall be removed.

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 under-utilised 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

November 2018