



An
Bord
Pleanála

Inspector's Report ABP-302231-18

Type of Appeal	Section 11(3) Appeal against a notice under section 11(1) (PL10 .300568).
Location	Callan Road/Circular Road, Kilkenny.
Planning Authority	Kilkenny County Council.
Planning Authority VSL Reg. Ref.	VSR/11.
Site Owner	Elm Park Construction Limited.
Date of Site Visit	22 October 2018.
Inspector	Stephen Rhys Thomas.

1.0 Introduction

- 1.1. This appeal refers to section 11(1) and (3) notices issued by Kilkenny County Council, stating that the site stands entered on the Vacant Sites Register at lands at Callan/Circular Road, Kilkenny in accordance with the provisions of section 11(1)(a) of the Urban Regeneration and Housing Act 2015 (as amended).

2.0 Site Location and Description

- 2.1. The appeal site, which is irregular in configuration is located approximately a kilometre to the southwest of Kilkenny City. The site is prominently located at the junction of Callan Road and Callan Road, which defines the site's south-eastern boundary and Circular Road, which defines the site's north-eastern boundary. The junction itself is a mini roundabout. The boundary to the northwest adjoins a residential estate Rose Hill Court, a cul-de-sac development with a mix of terraced, semi-detached and detached dwellings. The remaining boundary to the southwest adjoins a commercial vehicles centre.
- 2.2. The site is level and surrounded by hoarding and a metal fence backed by plastic mesh. There is a large amount of builder's materials (scaffolding gear/poles, traffic cones, fuel tanks) and builder's waste on the site, along with steel transport containers, a commercial van and teleporter machine. The site is mostly overgrown with grass, however, there is evidence of recent building activity associated with the erection of a new boundary wall to Rose Hill Court. There is a footpath along the site's roadside boundaries.

3.0 Statutory Context

- 3.1. **Urban Regeneration and Housing Act 2015 (as amended).**
 - 3.1.1. The Notice issued in relation to residential lands and the accompanying reports have assessed the site on the basis of the tests outlined in Section 5(1)(a) of the Act.
- 3.2. **Development Plan Policy**
 - 3.2.1. The Kilkenny City and Environs Development Plan 2014-2020 is the operative development plan. The site is located on lands that are subject to zoning Existing Residential – 'Objective: To protect, provide and improve residential amenities.'

- 3.2.2. Objective 3A To promote the redevelopment and renewal of areas identified having regard to the core strategy, that are in need of regeneration, in order to prevent—
- (i) adverse effects on existing amenities in such areas, in particular as a result of the ruinous or neglected condition of any land,
 - (ii) urban blight and decay,
 - (iii) anti-social behaviour, or
 - (iv) a shortage of habitable houses or of land suitable for residential use or a mixture of residential and other uses.

The levy may be applied to all identified 'Regeneration' land and 'Residential' land in existing land use zonings. In particular, the areas covered by the following zoning objectives are considered to constitute regeneration land:

- General Business
- Mixed Use
- Business Park

Other regeneration zonings may also be identified in any relevant Local Area Plans.

4.0 **Planning History**

4.1. Subject site

PA reference ID155 and An Bord Pleanála reference PL10 .300568. Vacant Site Levy - Appeal S.9. Notice confirmed 18 May 2018.

PA reference 17/162 and An Bord Pleanála reference PL10.248925. Permission for 15 residential units consisting of 8 apartments and 7 houses. February 2018.

PA reference 08990074. Permission for 33 apartments and a ground floor level medical centre with a basement car park. February 2009.

PA reference 14990007. Permission refused to extend the appropriate period of 08/74. April 2014.

The site has a lengthy planning history which includes recent refusals of permission for similar types of residential development.

5.0 Planning Authority Decision

5.1. Planning Authority Reports

5.1.1. Register of Vacant Sites Report - The site is zoned Existing Residential in the Kilkenny City and Environs Development Plan 2014-2020. The site is classified as residential land and has been vacant or idle for the last 12 months. Until the site is brought into active use it should remain on the VSR.

5.1.2. Response to Section 11 Submission Report – Site visit on 3 July 2018.
Commencement notice for boundary wall received, however, until site is brought in active use, site should remain on the register.

5.2. Planning Authority Notice

5.2.1. Kilkenny County Council advised the site owner that the subject site (Planning Authority site ref. VSR11) has not been cancelled on the Vacant Sites Register. The notice, issued pursuant to section 11 of the Act and dated 5 July 2018, stated that particulars of the site remain entered on the Vacant Sites Register and that further information can be obtained from the Council website.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The landowner has submitted an appeal to the Board, against the decision of Kilkenny County Council to retain the subject site on the Register. The grounds of the appeal can be summarised as follows:

- Permission has been obtained on appeal in relation to a residential development, reference P17/162 and PL10.248925 refers.
- A commencement notice has been submitted to construct a new boundary wall, part of the permitted scheme.
- A 450mm high pressure asbestos watermain runs diagonally through the site and must be diverted, Irish Water will specify the requirements for this work.
- Following diversion of the services, it is intended to commence work on three houses, subject to phasing approval from the planning authority.
- The works so far and the arrangements made to divert services all form part of the phased approach to developing a small site such as this.

The appeal is supported by a copy of the submission letter regarding the Council Notice stating an intention to retain the site on the register, the section 11 Notice dated 5 July 2018, a planning drawing showing the alignment of the services to be diverted and photographs of the construction of a new boundary wall.

6.2. Planning Authority Response

The submission of a commencement notice for a boundary wall does not trigger the provision of housing as permitted. The site should remain on the register until the site is brought into active use for housing.

6.3. Further Responses

The appellant reiterates the grounds of appeal already submitted. In addition, the appellant outlines the progress made to date concerning the ongoing construction activity associated with the site:

- The boundary wall to Rose Hill Court, almost complete (photographs included).
- Contact has been made with Irish Water with regard to the diversion of services.
- The next step is to construct the boundary wall and railings to Callan Road/Circular Road, a commencement notice drawing has been prepared (included with the submission).
- This will be followed with a commencement notice for three houses.

In addition, the most recent response of the appellant outlines that a Commencement Notice (CN0045711KK) has been lodged with regard to the construction of seven townhouses. Ground works have been validated by Kilkenny County Council as building authority. The name of the estate has been agreed and electricity connections with ESB Networks have been applied for.

7.0 Assessment

7.1. Introduction

- 7.1.1. An appeal under section 11 of the Act, requires that the burden of showing that the site is no longer a vacant site is on the owner of the site. Section 11(5) of the Act states that the Board shall determine whether the site was no longer a vacant site. The subject site stands entered on the Kilkenny County Council VSR dated 7 December 2017. It is the purpose of a section 11 appeal to determine if a site is no longer a vacant site. It therefore follows, that the original reasons and considerations for the placement of the site on the register are not subject to the appeal. Consequently, my assessment is limited to the tests for a vacant site outlined by the 2015 Act, for the time period between the date of entry on the register and the date of the relevant notice.
- 7.1.2. By reference to the planning authority notice served under section 11(1) of the 2015 Act and dated 29 May 2018 of which I have not seen but is referred to by the appellant in their submission against being retained on the register. Further, with reference to the Notice of 5 July 2018 it is stated that the subject site is entered on the Vacant Sites Register. The subject site is located in an area zoned Existing Residential – ‘Objective: To protect, provide and improve residential amenities. Objective 3A of the County Development outlines the Council’s approach to regeneration and residential lands in relation to a vacant site levy on all vacant residential and regeneration lands as set out in the Urban Regeneration and Housing Act 2015. As the land use zoning has not changed since the placement of the site on the register, this assessment takes into account the characteristics of the site in the context of section 5(1)(a) of the Act, residential land.
- 7.1.3. The appellant states that they have secured permission for the site, and intend to commence construction of three houses in the coming months. In the meantime, the appellant has constructed boundary walls, has plans to commence construction of other boundary walls and has plans to divert services. In addition, the appellant sets out the approach to developing the site, that entails raising its profile, marketing and rolling funding. All of these works and actions are, in the words of the appellant, the normal course of events in the development of a small residential site. The planning authority’s response is that though a commencement notice for a boundary wall has been submitted, this does not constitute a full and beneficial use for the site.

7.1.4. In the interests of clarity, section 11(1) of the 2015 Act, instructs the planning authority to give written notice to the owner of any site that stands entered on the register, outlining the following:

(a) stating that the site stands entered on the register,

(b) setting out such matters as are entered in the register in respect of the site,

(c) stating that there shall be charged and levied for each year beginning with 2018 in respect of each vacant site in relation to which a market value has been determined and that stands entered on the register a levy in accordance with section 15, and

(d) informing the owner that he or she may make submissions in respect of the entry to the planning authority in writing within 28 days after the date of such notice.

The Notice shall be issued no later than the 1 November 2018, Circular letter PL 06/2018 refers, a notice was issued on the 29 May 2018 and subsequent notice was served on the 5 July 2018. The land owner can appeal the decision of the planning authority, sections 11(4) and (5), state the following:

(4) On an appeal under this section the burden of showing that the site, or a majority of the site, is no longer a vacant site shall be on the owner of the site.

(5) Where the Board determines that a site is no longer a vacant site it shall give written notice to the planning authority who shall cancel the entry on the register in respect of that site.

Thus, the purpose of a section 11 appeal is to determine if the status of the site in question, is still a vacant site or is no longer a vacant site.

7.2. Site development

7.2.1. The appellant has stated that site works have commenced with regard to a boundary wall, that further boundary works are the subject of a commencement notice and that three houses will be commenced in the coming months. Whilst, I acknowledge that some works have commenced on the site, including the completion of a boundary wall to Rose Hill Court and what appear to be the beginnings of boundary works to Circular Road, these only constitute minor works. From my observations of the site, I could not detect any setting out or foundation works, nor could I see evidence of

service pipe diversion. In addition, there were no works taking place during my site visit. I acknowledge that the site has a valid permission for development and that the works already carried out may comprise the implementation of a planning permission. However, given the minor scale of the works already carried out, I do not consider that significant development has commenced on site or that the site is being put to beneficial use.

7.2.2. On the matter of extant planning permissions, the Act is clear: the test for inclusion is the past condition of the site from the date of entry on the Register. I refer to Circular Letter PL7/2016, Appendix 3, that states: “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. 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”. In my view, the site meets the criteria for inclusion on the VSR, the existence of an extant planning permission has no part to play in this instance. The site is therefore a vacant site. The Board should note under section 10 of the 2015 Act, that the entry of a site on the register can be cancelled, if no longer vacant, as follows:

(1) The owner of a vacant site that stands entered on the register under section 6 (2) shall notify the planning authority in whose functional area the site is located if it is no longer vacant or idle.

(2) If, at any time, a planning authority is satisfied that a site that stands entered on the register under section 6 (2) is no longer a vacant site it shall cancel the entry on the register in respect of that site.

This section of the Act is of particular relevance to the submissions made by the appellant with respect to the imminence of construction on site and the delivery of housing units.

7.2.3. In this regard, I note the appellants comments referencing the lodgement of commencement notices with the planning authority, raising finance and marketing of the site. However, the 2015 Act does not indicate that administrative activity in relation to a site, such as obtaining planning permission, submitting commencement notices and so on, should be considered when determining whether a site is a

vacant site. I do not consider that the activities listed by the appellant comprise either significant site works or a permitted and ongoing use of the lands.

7.3. Vacant Site

- 7.3.1. A section 11 appeal requires the Board to determine if a site is no longer a vacant site. I can confirm that the condition of the site has not changed significantly since I last visited on the 4 April 2018. The site remains a former construction compound, albeit with the addition of some new boundary wall works and additional plant and equipment on site. Works were not ongoing during my site visit and the scope of any works already carried out were minor in scale. In my mind, the site is still a vacant site in terms of section 5(1)(a)(iii) of the 2015 Act.
- 7.3.2. I note that the appellant does not dispute that the site is in an area in need of housing or that the site is suitable for the provision of housing. The site is still zoned residential and as stated by the planning authority, there is a need for housing in the area. In addition, the site is suitable for the provision of housing as evidenced by an extant planning permission and the residential land use zoning. I note that in the context of section 5(1)(a)(i) and (ii) of the 2015 Act, the Board have already determined that the site should be placed on the register, ABP reference PL10.300568 refers. I am satisfied that the site can remain on the register as a vacant site as defined by the entirety of section 5(1)(a) of the 2015 Act.

8.0 Recommendation

- 8.1. I recommend that in accordance with section 11(5) of the Urban Regeneration and Housing Act 2015 (as amended), the Board should give written notice to the planning authority that states the site stands on the register in respect of the lands at Callan Road/Circular Road, Kilkenny as the site remains a vacant site. Therefore, the entry on the Vacant Sites Register on the 7 December 2017 shall remain.

9.0 Reasons and Considerations

Having regard to

- (a) The information placed before the Board by the Planning Authority in relation to the site that stands entered on the Vacant Sites Register,
- (b) The grounds of appeal submitted by the appellant,

(c) The report of the Planning Inspector and

(d) The condition of the site, being that of a construction site compound marginally modified by the erection of a boundary wall to Rose Hill Court

the Board considered that it is appropriate that a notice be issued to the planning authority to confirm that the site shall remain entered on the Vacant Sites Register.

Stephen Rhys Thomas
Planning Inspector

8 November 2018