



An
Bord
Pleanála

Inspector's Report ABP-302235-18

Type of Appeal	Section 11(3) Appeal against a notice under section 11(1).
Location	Chatsworth Street, Castlecomer, Co Kilkenny.
Planning Authority	Kilkenny County Council.
Planning Authority VSL Reg. Ref.	VSR16.
Site Owner	Kieran Gorey.
Date of Site Visit	22 October and 21 November 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 Chatsworth Street, Castlecomer, Co 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 is large, 3.39 Hectares, and irregular in configuration, located in the centre of Castlecomer in County Kilkenny. The site is located to the rear of commercial and residential properties along Love Lane to the west, Barrack Street to the south and Chatsworth Street to the east. The northern boundary of the site follows the rear of properties that back onto a tributary of the Dinin River.
- 2.2. The site is laid out for the most part as a large agricultural field bisected by a large railway embankment (not in use). The field appears to be in use for grazing cattle, though on the day of the site visit, no livestock were present. A smaller proportion of the site comprises former mill buildings, sheds, tanks and associated yard and car parking space. The buildings are in poor repair and appear derelict, not in use. The yard space and car parking area is quite well kept, however, there were areas where litter has collected. Cars were parked on the site on the day of the site visit.

3.0 Statutory Context

3.1. Urban Regeneration and Housing Act 2015 (as amended).

- 3.1.1. The Notice issued in relation to regeneration lands and the accompanying reports have assessed the site on the basis of the tests outlined in Section 5(1)(b) of the Act.

3.2. Development Plan Policy

The **Castlecomer LAP 2018** is the operative development plan. The site is located on lands that are subject to zoning Mixed Use -To improve the vitality and viability of the town centre by encouraging a variety of uses in town centre locations and supporting the reuse of derelict and underutilised sites and buildings. The site is designated as Key Development Area 1 – Old Creamery Site (Town Centre).

The site is subject to two Transportation Objectives:

T2 - To create a new street from Chatsworth Street to the Ballinakill road via the old Creamery site with co-located pedestrian and cycle lanes and public lighting

T3 - To link the Old Creamery site to central Chatsworth Street via a pedestrian link only with public lighting.

Section 4.4 Vacant Sites Levy

The Urban Regeneration and Housing Act 2015 introduced a Vacant Sites Levy as a site activation measure to ensure that vacant or underutilised land in urban areas is brought into beneficial use. This Plan will promote, encourage and facilitate the appropriate development of sites and areas in need of development and renewal in order to prevent:

- Adverse effects on existing amenities in such areas, in particular as a result of the ruinous or neglected condition of any land
- Urban blight or decay
- Anti-social behaviour, or
- A shortage of habitable houses or of land suitable for residential use or a mixture of residential and other uses

For the purpose of the vacant sites levy the following zoning will be considered for the purpose of the act in accordance with the County Development Plan:

- General business, mixed use, industrial and community facilities for regeneration purposes.
- All residential zonings for residential purposes

4.0 Planning History

4.1. Subject site

No planning history is recorded in the reports submitted by the planning authority.

5.0 Planning Authority Decision

5.1. Planning Authority Reports

5.1.1. Register of Vacant Sites Report -

- 5.1.2. Initial report dated 17 October 2017 - The site is zoned Mixed Use in the Castlecomer Local Area Plan 2009. Site inspection took place on the 24 March 2017. The site is classified as regeneration land and has been vacant or idle for the last 12 months. The buildings are in poor condition and have an adverse effect on the area.
- 5.1.3. Response to Section 7 Notice Submission Report dated 4 December 2017 – The site remains a vacant site despite its recent purchase. Until the site is brought into active use it remains a vacant site. The site will be expanded to include adjoining land ownership.
- 5.1.4. Response to Section 11 Submission Report – Site inspection 3 July 2018. Until the site is brought into active use, it remains on the register. The car parking use is not authorised and is disregarded as being a permitted use.

5.2. **Planning Authority Notice**

- 5.2.1. Kilkenny County Council advised the site owner that the subject site (Planning Authority site ref. VSR16) 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:

- The site is in use for car parking and is open to the public.
- A new LAP has been adopted and the detailed masterplan proposals for the site have changed. This has impacted upon the appellant's attempts to bring together a planning application to comprehensively develop the site. It is the intention of the appellant to lodge a planning application in the near future.

6.2. **Planning Authority Response**

The site remains a vacant site and the use of the site as a car park is not a permitted use and should be disregarded.

6.3. Further Responses

None.

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 14 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 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 Mixed Use. Section 4.4 of the LAP sets out to promote the redevelopment and renewal of areas that are in need of regeneration, in order to prevent a combination of impacts including a shortage of habitable houses or of land suitable for residential use or a mixture of residential and other uses. This assessment takes into account the characteristics of the site in the context of Section 5(1)(b) regeneration land.

7.1.3. The appellant states that the site has recently changed hands and that due to the significant changes to the masterplans illustrated in the previous and current LAP, there have been delays in bringing forward a planning application. The planning authority make the point that the site is still vacant and should remain on the register, the car parking use is not permitted and should be disregarded.

7.2. Section 11 Appeal

7.2.1. 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 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.

- 7.3. In use for car parking
 - 7.3.1. The appellant states that the site is open to the public who can avail of car parking free of charge. I observed that cars were parked on the site, despite signs that stated 'no parking'. The area upon which the cars were parked comprised the yards, circulation areas and informal parking space around the former mill buildings. The mill buildings and the complex as a whole, have most likely been in place for a considerable time period. In addition, I note that the overall area devoted to car parking is quite small when compared to the overall site, that includes a substantial area of farmland.
 - 7.3.2. I consider that the use of the site for car parking is a minor use and whether or not it is a permitted use is a moot point. The Act states that a site is a vacant site if the site, or the majority of the site is vacant or idle. In this instance, the use of the site for

car parking is a very minor portion of the site and so that matter should be set to one side.

7.4. Site development

- 7.4.1. The appellant has stated that now the new masterplan for the area has been published in the Castlecomer LAP 2018, efforts are afoot to prepare a planning application. The planning authority have made no comments in relation to such efforts and there is no information on the file to demonstrate to me that a planning application is in preparation. Irrespective of a planning application in the offing, 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”. Should the site meet the criteria for inclusion or to remain on the VSR, the existence of an extant planning permission has no part to play in this instance.

7.5. Vacant Site

- 7.5.1. As I have already outlined the purpose of a section 11 appeal is to determine if a site is no longer a vacant site. I note that there is no record of a section 9 appeal with respect to the placement of the site on the register and I must assume that the owner made no such appeal and accepted the planning authority’s decision. It is however, important to briefly examine the present condition of the site in the context of its placement on the register and the requirement for the criteria to be fulfilled under section 5(1)(b)(i) and (ii) of the 2015 Act (as amended):

(b) 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.

7.5.2. In addition, I would advise the Board that Circular letter PL 06/2018, provides clarity as to what constitutes 'vacant or idle' in relation to 'residential land' not 'regeneration land'. This is relevant because, I note that section 4.4 of the LAP states that for the purpose of the vacant sites levy the following zonings; general business, mixed use, industrial and community facilities will be considered for regeneration land purposes in accordance with the 2015 Act. Therefore, the provisions of section 63 of the Planning and Development (Amendment) Act 2018 do not apply.

7.5.3. The appellant has not set out any grounds to dispute the condition of the site and the effects it may be having on the area. The appeal before me contains some information to support the planning authority's decision to place the site on the register, mainly to do with the neglected condition of the buildings on the site. To assist in the assessment of placing a regeneration site on the register, the Act sets out the following under section 6(6):

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.

7.5.4. As I have already noted the majority of the site is currently in use for agriculture, not vacant or idle. In any case, the farmland portion of the site is in good condition, not ruinous, not neglected, not causing anti-social behaviour to take place and unlikely to be the cause of a reduction in housing or reduction of people living in the area. The buildings that occupy a minor portion of the site are however, in a neglected condition and almost certainly have an adverse affect on the character of the area.

7.5.5. The 2015 Act is very clear in relation to section 11 appeals as follows:

(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.

In this instance, the majority of the site is in use for agriculture, not vacant or idle. Even though a proportion of the site is vacant, with a use that may not be a permitted use and that the buildings are in a neglected condition, such a proportion of the site is subordinate to the overall lands and cannot render the entire site a vacant site. I am satisfied that the majority of the site is not a vacant site because it is in use for agricultural purposes.

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 should not stand on the register in respect of the lands at Chatsworth Street, Castlecomer, Co Kilkenny as the site is not a vacant site. Therefore, the entry on the Vacant Sites Register on the 14 December 2017 shall be removed.

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 majority of the site is in use for agricultural purposes,

the Board considered that it is appropriate that a notice be issued to the planning authority to remove the site from the Vacant Sites Register.

Stephen Rhys Thomas
Planning Inspector

14 December 2018