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Bord  
Pleanála

## Inspector's Report ABP-302251-18

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<b>Type of Appeal</b>	Section 9 Appeal against section 7(3) Notice.
<b>Location</b>	Market Square, Baltinglass, County Wicklow.
<b>Planning Authority</b>	Wicklow County Council.
<b>Planning Authority VSL Reg. Ref.</b>	VS/Balt/15.
<b>Site Owner</b>	Liam Quinn.
<b>Planning Authority Decision</b>	Place on Register.
<b>Date of Site Visit</b>	9 January 2019.
<b>Inspector</b>	Stephen Rhys Thomas.

## 1.0 Introduction

- 1.1. This appeal refers to a section 7(3) notice issued by Wicklow County Council, stating their intention to enter a site at Market Square, Baltinglass, County Wicklow on to the Vacant Sites Register (VSR) in accordance with the provisions of section 6(2) of the Urban Regeneration and Housing (URH) Act 2015. The notice states that the Planning Authority is of the opinion that the site is a vacant site within the meaning set out in Sections 5(1)(b) of the URH Act 2015.

## 2.0 Site Location and Description

- 2.1. The site is located on the northern side of Market Square in Baltinglass, County Wicklow. Baltinglass is a small market town in West Wicklow situated west of the Wicklow Mountains and on the N81.
- 2.2. The appeal site comprises a two storey building and side extension onto Market Square. The overall site is long and narrow and extends in a northerly direction from the street. The side and a large rear extension accommodate a funeral home, complete with vehicle access, chapel and ancillary facilities. The two storey building approached at first floor level by granite steps is an imposing structure, but not occupied. The buildings are moderately maintained and the balance of the property to the rear is fenced and overgrown.

## 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 report has assessed the site on the basis of the tests outlined in Section 5(1)(b) of the Act. The Notice is dated 6 July 2018 and is accompanied by a map outlining the extent of the site to which the Notice relates.

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. Baltinglass is classed as a Level 5 Town and the site is zoned TC Town Centre in Map 1 of the Baltinglass Town Plan of the Wicklow County Development Plan 2016-2022.

Policy HD19 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.

## **4.0 Planning History**

4.1. Subject Site:

PA reference **04/2001** – Permission for shopping centre, offices, 371 car parking spaces and new access road. July 2005.

## **5.0 Planning Authority Decision**

### **5.1. Planning Authority Reports**

- A Vacant Site Levy Investigations report dated 25 January 2018 outlines the condition of the site, type of site for the purposes of the VSL, Town Centre zoning, site area (0.19 Hectares), the site has been vacant for 12 months, the condition of the site is having an effect on the amenities and character of the area. Place the site on the register.
- A second Vacant Site Levy Investigations report outlining the date of visit (3 July 2018), the responses to the submissions made by the landowner and concludes that the site is regeneration lands as defined by Objective HD19 of the County Development Plan, the majority of the site is vacant, the site is in a ruinous and neglected condition and is having an adverse impact on the amenities and character of the area.

The planning authority's submission is accompanied by colour photographs and maps, the initial submissions from the appellant in relation of the intention to place the site on the register and various correspondence between the planning authority and landowner in relation to the process and issuing of notices.

### **5.2. Planning Authority Notices**

The section 7(1) Notice was issued on the 23 February 2018 and stated an intention to place the site on the register and invited submissions.

Planning Authority decided under section 7(3) to issue a notice on 6 July 2018 referencing sections 5(1)(b) and 6(6) of the Act and stating that the site has been entered onto the Vacant Sites Register.

## **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 Wicklow County Council to place the subject site on the Register. The grounds of the appeal can be summarised as follows:

- The appellant is unclear how the planning authority reached its conclusion that the site was a vacant site as no site visits were ever organised.
- The two storey building adjacent to the road is not occupied at present, however, plans are being put together to renovate the structure in the near future. A Funeral home shares frontage and access with the street and occupies a large building to the rear, this is in use.
- The site should be treated as three individual sites, site 1 the unoccupied two storey building, site 2 the funeral home and site 3 the balance of lands are currently landlocked and unavailable for development.
- The appellant criticises the planning authority's methodology in the application of the URH Act, and questions whether 'Regeneration Land' has been identified correctly in the County Development Plan (CDP). Whilst the CDP states that areas zoned 'town centre' may include sites that are in need of regeneration, none have so far been identified including the appellant's lands. The appellant cites Clare County Council and the Ennis zoning map as a good example of identifying regeneration sites where the VSL should apply.

## 6.2. **Planning Authority Response**

A response received from the Planning Authority to the grounds of appeal are summarised as follows:

- Given that no submissions were received from the Department of Housing, Planning, Community and Local Government in relation to the adoption of the County Development Plan, it is assumed that the objectives with regard to the VSL were acceptable. In this regard, the planning authority cite the Inspectors Report (ABP-300550-18) and conclude that the site meets the definition of regeneration land in the Act.
- The site was visited in early December 2017 and again in June 2018, photographs are submitted.

- The intention to renovate the two storey building is welcomed but doesn't serve to remove the site from the register.
- The entire site is in the ownership of Mr Quinn, the site formed part of a much larger site for a comprehensive town centre redevelopment permission. The PA do not understand how the site could be landlocked.
- The structures on the site are in a neglected condition and it is this factor that affects the character of the area.
- It is considered that the site complies with the requirements of the Act in relation to sections 5(1)(b) and 6(6) and should be placed on the register.

### 6.3. Further Submissions

The appellant has responded by reiterating the initial grounds of appeal and reinforces their view that the site is in fact three separate sites and should be treated as such.

The site as outlined is owned by Quinn's of Baltinglass, of which Mr Liam Quinn is a Director. Mr Quinn owns lands adjacent to the site, so it is incorrect of the Council to state that the lands and adjacent lands are in a single ownership, they are not. This is the reason for the site being landlocked.

## 7.0 Assessment

### 7.1. Introduction

- 7.1.1. An appeal under section 9 of the Act, requires that the burden of showing that the site was not a vacant site for the 12 months preceding the date of entry on the Register is on the owner of the site. Section 9(3) of the Act states that the Board shall determine whether the site was a vacant site for the duration of the 12 months concerned or was no longer a vacant site on the date on which the site was entered on the register. The subject site was entered onto the Wicklow County Council VSR on the 6 July 2018.
- 7.1.2. The Notice has been issued under the provisions of Section 6 of the Act which relates to the register of Vacant Sites. The assessment undertaken by the Planning Authority to inform the placing of the site on the Register, which I outline in section

5.1 above, refers to the tests included for regeneration lands under section 5(1)(b) and by reference to Section 6(6) of the Act as is required for lands zoned for regeneration purposes.

7.1.3. The main concerns of the appellant are that the site was not adequately surveyed by the Council, raises questions about the implementation of the URH Act and the identification of regeneration sites in the County Development Plan, that the site should be considered as three separate sites and that the lands in the area are not all in the ownership of Mr Quinn. The Council maintain that the site is vacant, the condition of the site is having an impact on the character of the area, complies with the tests for a vacant site under section 5(1)(b) and the site should remain on the register.

7.1.4. 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.*

The site must meet both tests and I will address each in turn.

7.2. Vacant or Idle

7.2.1. The appellant states that the two storey building on the site is currently unoccupied but that there is an intention to renovate it in the future. A funeral home currently operates from the other buildings on the site and that the balance of lands are landlocked. I can confirm that the two storey building exhibited all the signs of a vacant building, but it is currently in an acceptable state of repair. The smaller side building that provides access to a much larger building to the rear appears to be in use. The larger building to the rear is laid out as a funeral home, though not in use during my site visit. The balance of the lands to the rear are overgrown, but level and securely fenced.

7.2.2. Section 5(1)(b) of the 2015 Act refers to the site, or the majority of the site, is vacant or idle. In this instance and based upon the relative site coverage of the operative

uses on the site, that being the funeral home, the majority of the site remains vacant or idle. I am satisfied that the site is a vacant site because the majority of the site was not and is not currently in use. The appellant has already stated the unoccupied nature of the two storey building and the inability to develop the 'landlocked' rear portion of lands. All of which adds up to the majority of the site.

7.2.3. I note that the appellant challenged the robustness of the planning authority's survey of the site. I note that the planning authority have stated that the site has been vacant for 12 months and show a number of photographs detailing the condition of the site. In addition, the planning authority note the existence of the funeral home. I am satisfied that the planning authority carried out their investigations in an efficient and robust way and have satisfied the requirements of the 2015 Act.

7.2.4. Notwithstanding the intention to renovate an occupied building and the ongoing use of a minor portion of the site for funeral home purposes the majority of the site is not in use and shows all the signs of a long term vacant or idle site. 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 planning authority outlines in detail the condition of the site and examines the tests included in Section 6(6).
- 7.3.3. Firstly, the planning authority note the condition of the site and the impact it is having on the amenities and character of the area. The character of Baltinglass in general and the immediate area in particular, is mixed. From my observations of the site it is difficult to conclude that it stands out as a particularly neglected site. The buildings on the site are not ruinous, the two storey building has been re-roofed albeit a while ago, its windows are in place and the walls are painted. The funeral home is in a decidedly better condition. The site interior, or backland area, is overgrown, but it cannot be viewed from the public road and so cannot in my mind influence the character of the area. I think it would be harsh to conclude that these buildings as viewed from the street have been especially neglected, particularly in the context of the broader streetscape of Market Square. For these reasons, I am not satisfied that the land or structures on the site are either ruinous or neglected.
- 7.3.4. The second matter 6(6)(b) refers to anti-social behaviour which was or is taking place in the area. I did not detect excessive or even obvious levels of litter on the street outside the site. In any case this is a town centre location where a certain degree of litter may be expected and not necessarily a signal that anti-social behaviour is or has taken place. I did not observe any obvious incidences of graffiti. I do not consider anti-social behaviour in terms of the Act referring to such behaviour which was or is taking place, is in fact taking place in the area. I do not consider that the site would meet this test.
- 7.3.5. There is no evidence, either from the appellant or the planning authority to address part (c). Because the Act includes commas and an 'or' between (a), (b) or (c), only one criteria is required to be met. In the absence of compelling evidence either way, I am inclined to advise the Board that it would appear unreasonable to include the site on this basis without any information to support such a view. Should the planning authority wish to compile information in this regard, they can of course begin the

process of re-registering the site if appropriate. In that context, I am satisfied that the site fails to meet any of the requirements of section 5(1)(b)(ii) of the 2015 Act.

#### 7.4. Procedural Issue

- 7.4.1. The appellant has raised an issue that the Council have failed to correctly implement the Urban and Regeneration Housing Act 2015 and not identified specific regeneration areas in their Development Plan. I note that Policy HD19 in Chapter 4 of the Wicklow CDP 2016-2022 refers to Urban Regeneration and Housing. In this regard, it is noted that all lands zoned 'Town Centre' in the plan 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. It is clear to me that the Council have identified that all 'Town Centre' zoned land will be considered for regeneration purposes and in my view any further examinations to determine suitability or otherwise have already occurred in the survey and analysis employed in the establishment of the register. I am therefore satisfied that the County Development Plan incorporates the appropriate policy background to facilitate the establishment of a Vacant Sites Register in accordance with the 2015 Act.

#### 7.5. Ownership

- 7.5.1. The appellant has questioned the boundaries and ownership of the site. Firstly, the appellant believes the overall should be three separate sites and should be treated as such. Whilst it may be sensible in the mind of the appellant to divide the site into three uses, the planning authority elected to form a single coherent site for the purposes of the VSL. The Board have no role in the drawing up of site boundaries and so the determination of the appeal relies on the material submitted, in this case the site as outlined and published on the register.
- 7.5.2. I note that the planning authority have referenced Mr Liam Quinn, Quinn's of Baltinglass in all their correspondence. The appellant states that the landholding is owned by Quinn's of Baltinglass of which, Mr Liam Quinn is a Director and not the owner of the site. In addition, the appellant points out that the roadside portion of the site is registered on Property Registry Authority maps but the balance of the lands are not. It is also stated that Mr Liam Quinn owns other lands in the vicinity. I would direct the Board to section 4 of the appellant's submission dated 1 October 2018, for

clarity on the matter. The issue of land ownership is only touched on by both the planning authority and the appellant, there are no Folio reference numbers or folio maps on the file. There is conflicting evidence in relation to the specific owner of the site, nevertheless an appeal to the Board has been made. On the balance of probability, the 'landowner', either Mr Liam Quinn or Mr Liam Quinn a Director of Quinn's of Baltinglass has made an appeal and I am satisfied that the landowner has been correctly alerted to the status of the site by the planning authority notices.

## **8.0 Recommendation**

8.1. I recommend that in accordance with section 9(5) of the Urban Regeneration and Housing Act 2015 (as amended), the Board should cancel the site (VS/Balt/15), that was not a vacant site for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 6 July 2018 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 entry of the site on the Vacant Sites Register,
- (b) The grounds of appeal submitted by the appellant,
- (c) The report of the Planning Inspector and
- (d) The moderately maintained condition of the structures on the site in the context of the surrounding area, the lack of anti-social behaviour having taken place and the lack of evidence regarding any 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, all of this despite the majority of the site being vacant or idle,

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.

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Stephen Rhys Thomas  
Planning Inspector

23 January 2019