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Bord  
Pleanála

## Inspector's Report ABP-302252-18

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<b>Type of Appeal</b>	Section 9 Appeal against section 7(3) Notice.
<b>Location</b>	Site at Corner of Mill Street and Belan Street, Baltinglass, County Wicklow.
<b>Planning Authority</b>	Wicklow County Council.
<b>Planning Authority VSL Reg. Ref.</b>	VS/Balt/10.
<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 the Corner of Mill Street and Belan Street, 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 at the corner of Belan Street with Mill, Edward and Main Street, west of the River Slaney 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 is adjacent to a three storey house that incorporates a ground floor retail unit that faces onto Mill Street. The site runs along Belan Street and meets up with the boundary to a commercial unit to the west. The site is secured by steel hoarding to the back of the footpath, in good condition with mesh netting advertising at first floor level along Mill Street. The interior of the site comprises the superstructure of a two storey building at the eastern end with an undercroft parking area to the west. The buildings on site are unfinished and no works were ongoing 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 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 **10/2986** – Permission for extension of duration for a mixed use development, 04/2015 refers.

PA reference **7/557** – Permission for demolition of buildings, 04/2015 refers.

PA reference **04/2015** – Permission for a mixed use development.

## **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, the planning and enforcement history of the site, Town Centre zoning, site area (0.08 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 (28 June 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 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.
- Substantial works have been carried out on foot of a planning permission, the site cannot therefore be considered vacant.
- The appellant also states that the appeal should only determine the placement of the site on the register as the lands have not been correctly identified as a regeneration site in the CDP.

### **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 permitted structures on the site are in a neglected condition and it is this factor that affects the character of the area. There is a fear that the site could be used for illegal dumping.

- 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 builds on the matter of a correct objectives concerning regeneration lands in the CDP, by quoting legal precedence. In addition, the appellant warns against relying on previous Board decisions in relation to development plan objectives as these may not have been tested in the courts.

The appellant raises the issue of demand and the viability of developing sites in Baltinglass, whilst awaiting a more profitable time to complete development the site will be cloaked with heritage images of the area.

## 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 and that substantial works have been carried out on site. The Council maintain that 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 construction has been carried out on the site and for this reason the site is not vacant, it is occupied by a partially completed development. The appeal site is surrounded by hoarding in very good condition, secure and well maintained. The concrete superstructure of buildings has been constructed to date, however, on the day of my site visit no works were being carried out. In fact, it is most likely that construction activity on the site ended some time ago. The structures on the site serve no purpose and no current use was observed by me on the day of my site visit. I note that the appellant challenged the robustness of the planning authority's survey of the site. To be fair to the planning authority, the vacant or idle nature of the site could just as easily be concluded by any observer from a roadside inspection of the site. In this respect, I note that the planning authority have stated that the site has been vacant for 12 months and show photographs detailing the condition of the site.
- 7.2.2. Irrespective of partially constructed buildings on the site, 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. I agree, the partially constructed condition of the site is in stark contrast to the condition and appearance of other buildings in the vicinity. Though the exterior of the site is well maintained and secured it is the site interior and its partially constructed appearance that has an adverse impact on the area. There are two parts to section 6(6)(a) either land or structures are ruinous or neglected. In my view, it is hard to determine with certainty that the bare concrete superstructure experiences regular maintenance and attention, however the site boundary is maintained and for that reason I am satisfied that the site is not completely neglected. The appearance of a partially completed development has had and continues to have an adverse effect on the character of the area. The planning authority refer to the site's ruinous condition. The Act does not define the meaning of ruinous, but given the extent of concrete structures exposed to the elements and now prone to decay and deterioration, I would agree that the bare concrete structures are in a ruinous condition.

7.3.4. The second matter 6(6)(b) refers to anti-social behaviour which was or is taking place in the area. The planning authority state that litter was present on the street outside the site and given the vacant nature of the site, illegal dumping is feared likely. 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. With regard to the fear of future illegal dumping, I saw no signs within the site that this is the case and given the secure and maintained nature of the site I find it unlikely to be the case in the future. I do not consider that this would constitute anti-social behaviour in terms of 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). However, I am satisfied that the site is ruinous and meets the test in Section 6(6)(a) and that the site is a vacant site as defined by Section 5(1)(b)(ii).

#### 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.

## 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 confirm the entry on the register of site (VS/Balt/10) was a vacant site for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 6 July 2018 shall be deemed to take effect from that date.

## 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) That the site was a vacant site by virtue of no discernible use having taken place for some time and thus illustrates the vacant or idle nature of the site, that the ruinous appearance of the site has had and continues to have adverse effects on the existing amenities and character of the area, and that insufficient reason is put forward to cancel entry on the Vacant Sites Register
- the Board is satisfied that the site was a vacant site for the relevant period.

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Stephen Rhys Thomas  
Planning Inspector

18 January 2019