



An
Bord
Pleanála

Inspector's Report ABP-302593-18

Type of Appeal	Section 9 Appeal against section 7(3) Notice
Location	Lands measuring 2.27ha located at Corballis Lower, Rathdrum, Co. Wicklow
Planning Authority	Wicklow County Council
Planning Authority VSL Reg. Ref.	VS/Rathdrum/04
Site Owner	Knockcastle Property Dev. Limited
Planning Authority Decision	Place on Register
Date of Site Visit	11 January 2019
Inspector	Una Crosse

1.0 Introduction

- 1.1. This appeal refers to a section 7(3) notice issued by Wicklow County Council on 28th August 2018 under Reference VS/Rathdrum/04, stating their intention to enter lands measuring 2.27ha located at Corballis Lower, Rathdrum, 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 Liam Boyle of Knockcastle Property Developments Limited and others.

2.0 Site Location and Description

- 2.1. The site comprises an area of ground measuring 2.27 hectares which includes a structure known as the former Railway hotel and agricultural lands to the south and west of same which extend to the regional road to the west. The lands slope down from this regional road towards the former hotel structure which adjoins the railway line. There are a number of houses and structures related to the station and commercial structures in the vicinity of the site.

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.

Zones 'TC' and 'C' are included for the purposes of the Act for Rathdrum. The site is zoned Mixed Use in the Rathdrum Local Area Plan 2017-2023. I would note that the Plan includes footnote 3 which states *or other such zoning codes as may replace these, during the making of future local plan.* The site was zoned C in the Rathdrum LAP 2006-2016 with the current 2017-2023 LAP postdating the County Development Plan.

4.0 Planning History

The following planning history is relevant:

A planning application made on the site – **Ref. 17443** – was withdrawn.

5.0 Planning Authority Decision

5.1. Planning Authority Reports

- 5.1.1. An initial report, referenced Phase 1 refers to a Section 7(1) Notice dated 26 January 2018 which was issued but given it was superseded it is not considered necessary to address same other than to state that the area included within the site area includes lands along the stream to the north of the site and excludes the former hotel building to the east. The site area was noted as 2.29 hectares and comprised a regeneration site.
- 5.1.2. A second report (Report 2) dated 19 June 2018 references the initial Section 7(1) notice outlined above. The assessment notes that a site visit identified that the site (Folio WW37692F) is made up of the derelict former hotel and a large undeveloped site with the original assessment (above) not including the derelict building and given this part of the site is vacant and zoned that it should have been included. Reference is also made to the zoning of the site under the current and previous Rathdrum LAP's and Policy HD19 of the County Development Plan. It was recommended that a new Section 7(1) notice be issued and outlining the rationale for same including the change to the LAP zoning for the site.
- 5.1.3. Report 2B outlines the Notice of Intent (Section 7(1)) and the response to same. The zoning provisions as they relate to the current and former Rathdrum LAP and policy HD19 are outlined. In relation to Section 5(1)(b) it is stated that the majority of the site is vacant or idle. The total site is measured as 2.36ha with the vacant site measured as 2.27 ha. It is considered that the sites neglected condition considerably reduces the amenity of the area, with the train station the first place many tourists will see when arriving by train with the Rathdrum-Dublin route served by 23 trains with the site detracting from the town given its highly visible location entering and exiting the town. The report then provides an assessment of the site under Section 6(6) of the Act. In relation to Section 6(6)(a) it states that the entire site is in a ruinous and neglected condition with same seriously degrading the appearance of

the area. The hotel, it is stated is derelict with a detailed description of the hotel building outlined. It is stated that the land at the rear of the hotel is extremely overgrown and unkempt. In relation to Section 6(6)(b) it is stated that evidence of 'anti-social behaviour' in the form of dumping/littering was noted during investigations with graffiti sprayed on the walls of the hotel. Given the ease of access off the main road it is extremely likely to continue to attract anti-social behaviour. In terms of Section 6(6)(c) it is stated that there is no evidence to show a reduction in the number of habitable houses in the area.

5.2. Planning Authority Notice

5.2.1. The Notice was issued on 28th August 2018 with reference to Section 5(1)(b).

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal are summarised as follows:

- Site includes large building to N-E of site known located as The Former Railway Hotel which was fire damaged when acquired and boarded up in order to preserve what remained of the building and has had to be re-boarded many times
- Building is not a protected structure but is included on the NIAH as a building of considerable local and historical value as the building once formed part of the railway station and was built in the same cutting as the railway line with the eastern boundary wall now partially forming the boundary between the subject lands and the railway station;
- Old hotel building is not visible from the regional road as stated as it is built in a cutting and surrounded by trees with the lands used for grazing animals by agreement with a local on a temporary basis who also cares for the property;
- A house known as the Station Masters House adjoins the site as does the site of a house addressing the regional road;
- Original notice dated 26/01/2018 sent to appellant and didn't state if residential or regeneration land with appellant responding stating it was neither residential or regeneration lands and an application was submitted for permission;

- Further correspondence dated 21/06/18 noting site boundary had altered and now includes that former hotel building with a new notice and noting provision that replacement zones may be considered as per policy HD19 with the Council's conclusion misconceived with the changes providing for future plans with the planning application stated not to negate the application of the levy with submission sent to Council referring to application on site and reference in Circular to same and that site was neither residential or regeneration;
- Lands are clearly zoned Mixed Use in Rathdrum LAP;
- Planning history outlined with extract provided from Planning Report related to Ref. 17443 where 7 reasons for refusal were recommended with details outlined of process which lead to the withdrawal of the application and seeking to find a solution;
- While selection criteria for entry is not stated on the Notice, it is stated as regeneration land on the register which is defined in the Act with Policy HD19 identifying lands for regeneration purposes which for Rathdrum are TC and C with the site zoned MU and OS2 neither of which are identified zones as listed with Section 5(1)(b) not satisfied;
- Site has no adverse effects on existing amenities or complies with section 5(1)(b)(ii);
- No valid reason provided by the Council for inclusion on the Register;
- Until permission decided the feasibility and suitability of the site is unknown with no question of the Company hoarding the land with the company actively engaged in seeking permission with proposal on site being reconsidered with proposal required to ensure it contributes in a positive way to the enhancement of the area with new proposal paying particular attention to concerns previously raised;

6.2. **Planning Authority Response**

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

- Registered land owner is Knockcastle Property Developments Ltd with whom the PA have corresponded with no change of ownership indicated or registered and known owners remain the same;

- Following first phase of investigations notice of intent issued to landowner in January 2018 with response on 13 February;
- During second phase discovered that parts of the site that are vacant were not included on the map issued with Notice of Intent and in order to ensure correct boundaries included on register landowner issued with a new notice of intent (21st June 2018) which brought the amended site boundary to attention of the landowner and afforded them opportunity to response;
- Submission on initial notice (February 2018) stated zoning of land was not for residential or commercial and requested Council to reconsider the entry with response to the February submission sent to owner with the second Notice of Intent (June 2018) to clarify the matter;
- Council objective HD19 was outlined with changes to zoning provided for such that the zone change from commercial to mixed use in the current 2017 Plan would be facilitated with copies of this objective provided to owner;
- Inspectors report (ABP-300550-18) in relation to a site in Bray addresses the issue of zoning and use of Housing objective HD19;
- Land is zoned and suitable for development and the recent refusal of permission related to issues of design and scale and a live application would not negate inclusion on the register;
- Site is deemed vacant until such time it has been developed and is fulfilling its land use.

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:

- Subject site does not satisfy the criteria as a regeneration site in accordance with Section 6 of the Act;
- Gratitude expressed to the Board for requesting response to the Council's submission on the appeal and trust that the Board will direct Council to remove the site from the Register.

7.0 Assessment

7.1. Introduction

7.1.1. 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.

7.1.2. The site must meet both tests and I will address each in turn. Prior to addressing the matters outlined in Section 5(1)(b) I would like to address a matter of process.

7.2. Process

7.2.1. One of the main considerations of the appeal submitted is that the subject site is zoned 'Mixed Use' with this land use zoning not included within Objective HD19 of the County Development Plan which outlines the zonings for the purposes of regeneration within the Act for each settlement. The PA in their response refer to a number of matters. The first refers to objective HD19 in the County Development Plan which provides for the implementation of the 2015 Act. The objective outlines a list of zonings for each of the settlements for the purposes of regeneration in the Act. For Rathdrum these are stated to be TC and C. However it is noted that the Table which outlines the relevant zonings for each zone includes a footnote (No. 3) which states *or other such zoning codes as may replace these, during the making of future local plans*. The appellant disputes the PA's interpretation of this footnote. The County Plan is 2016-2022 with the current Rathdrum LAP dated 2017-2023 which postdates the County Plan and therefore comes within the provision of another zoning code as may replace these during the making of future local plans as the LAP followed the County Plan. I would also note that in the Rathdrum LAP 2006-2012 which was extended until 2016 that the site was zoned C which is provided for in Policy HD19 prior to its change to Mixed Use following the adoption of the County Plan.

7.2.2. The appellant references the zoning of part of the site for Open Space 2 in the Planners Report attached to the recent permission which was withdrawn. The Open

Space 2 zoning applies to a strip of land that adjoins the former hotel building and runs up to the Regional Road along the stream. This is clearly not part of the site which was included within the red line boundary on the map attached to the Section 7(3) notice. I would note that the Original Section 7(1) notice issued in January 2018 included part of this strip of open space zone but did not include the Former Hotel building. I consider that the site as included in the map attached to the Section 7(3) notice is zoned Mixed Use.

7.2.3. As a point of information I would also note that the PA also refer to a previous confirmation by the Board on a site in Bray (Ref. ABP-300550-18) whereupon it is stated that the Inspectors report on same addresses the matter of zoning and the use of the Housing Objective HD19 in the CDP with particular reference to Section 7.6 of the Report. While the report does indeed reference the proposed change in zoning on the Bray site and to the regeneration zonings outlined in the Dublin City Development Plan, it is clear from the report that the current zoning of the Bray site was TC which was included within HD19 for Bray and it was on the basis of the zoning existing at the time of the report that was relevant not the Opp site zoning which was proposed in the then Draft Plan. References to the Dublin City zonings was in response to the grounds of appeal raised on behalf of the appellant.

7.2.4. I would also note that the appellant states that the PA in their Section 7(3) Notice do not state whether the site is entered on the Register by way of Residential or Regeneration. I would note for the Board that the Section 7(3) Notice clearly states that the site is entered as a regeneration site.

7.3. **Vacant or Idle**

7.3.1. In terms of subsection 5(1)(b)(i), that the site, or the majority of the site, is vacant or idle, I note the appellants submission where they refer to the grazing of animals on the site and I would note that there were horses grazing on the site on the day of my visit which were being tended. Therefore, I would suggest that in the plain meaning of vacant or idle that it could be considered that the majority of the site is not vacant or idle as it is being used for a purpose and while not the purpose for which it is intended, it is an agricultural purpose with the majority of the site most appropriately described as currently comprising an agricultural field. While the structure on the site, the former Railway Hotel, is most certainly vacant and idle given its current state

of repair arguably the area of the former hotel structure and its immediate curtilage is a small minority area of the site. There are therefore very differing considerations within this overall site i.e. the former hotel structure and its immediate curtilage and the remainder of the site which is agricultural land. Therefore, I consider that the majority site cannot be considered to be vacant or idle for the purposes of Section 5(1)(b)(i).

7.4. Adverse Effects

7.4.1. Notwithstanding that I do not consider that the site meets the first test, for the benefit of the Board should they not agree with my recommendation on same, I would note that 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 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.

7.4.2. Therefore these are the tests which determine whether or not the site being vacant or idle, if the Board consider that the site is vacant or idle, has adverse effects 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 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).

- 7.4.3. The first matter Section 6(6)(a) is whether the land or structures in the area were, or are, in a ruinous or neglected condition. The PA report provides a detailed assessment of the former railway structure under Section 6(6) of the Act. It states that the entire site is in a ruinous and neglected condition with same seriously degrading the appearance of the area. The hotel, it is stated is derelict with a detailed description of the hotel building outlined. It is stated that the land at the rear of the hotel is extremely overgrown and unkempt. I would agree with the PA in respect of the condition of the structure on site. However I would also note that it is a small part of the overall site the majority of which is agricultural land or an undeveloped site. I would also note that while the former hotel structure is visible from the access road to the railway station and adjoining structures, it is not visible from the Regional Road. The agricultural site is visible from the Regional Road but I would consider that it could not be claimed that the agricultural lands are in a ruinous or neglected condition. I consider that there are two distinct parts to the site and the most appropriate remedy may be to address the former hotel structure and its curtilage under Section 5(1)(b) rather than include the lands which were subject of a previous application. Notwithstanding, while there is a neglected structure on the site, the majority of the site is not neglected. In this regard it is difficult for the overall site to meet this test.
- 7.4.4. The second matter Section 6(6)(b) refers to anti-social behaviour which was or is taking place in the area. The PA state that evidence of 'anti-social behaviour' in the form of dumping/littering was noted during investigations with graffiti sprayed on the walls of the hotel. They also reference alcohol cans and bottles on the site. They also state that given the ease of access off the main road it is extremely likely to continue to attract anti-social behaviour however future behaviour is not a consideration of the Act. I would suggest that the same argument applies to this test as that outlined for Section 6(6)(a) above in that while it is clear that anti-social behaviour is taking place within and in the vicinity of the former hotel structure, the same cannot be said for the majority of the site. In this regard it is difficult for the overall site to meet this test.
- 7.4.5. There is no evidence to address part (c) as is outlined in the report from the PA.

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 2.27 hectares at Corballis Lower, Rathdrum, Co. Wicklow was vacant or idle for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 28th August 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,
- (d) the use of the majority of the site for the grazing of animals, and
- (e) while the existing structure on site is neglected and has attracted anti-social behaviour and therefore, has adverse effects on the existing amenities or character of the area, the majority of the site visible from the regional road is not neglected and does not display any visible evidence of anti-social behaviour and therefore it is considered that the majority of the site 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

25th January 2019