



An
Bord
Pleanála

Inspector's Report ABP-302623-18

Type of Appeal	Section 9 Appeal against section 7(3) Notice
Location	Lands measuring 1.117ha located at Market Place, Rathdrum, Co. Wicklow
Planning Authority	Wicklow County Council
Planning Authority VSL Reg. Ref.	VS/Rathdrum/08
Site Owner	Pinturas Ltd
Planning Authority Decision	
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 19th September 2018 under Reference VS/Rathdrum/08, stating their intention to enter lands measuring 1.117ha located at Market Place, 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 Pinturas Limited.

2.0 Site Location and Description

- 2.1. The site comprises a significant block of land located to the rear of Market Place in the centre of Rathdrum and extends upwards from same addressing Brewery Lane to the south and Back Lane to the north. The site adjoins a number of existing structures outside of the site which address Brewery Lane and Market Square and a community centre type building to the northwest of the site. The site accommodates a number of incomplete structures in varying stages of completion/commencement. The ground level rises to the west from Market Place.

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.

Rathdrum is a Settlement Zone 3 where TC and VC are included for the purposes of the Act. The site is zoned TC in the current Plan.

4.0 Planning History

Ref. 18/87 – Permission granted in July 2018 for demolition of existing blocks 3, 4, 5, 6, 7 and 8; change of use of Block 1 from credit union to commercial and Block 2 from library to commercial; construction of a new 2-storey primary care centre; construction of a new single storey building to accommodate a library, café and pharmacy and 70 car parking spaces on a site of 0.5584 hectares.

Ref. 17/1355 – change of use from pharmacy to use as a credit union.

Ref. 17/48 – change of use of block 6 from public library and tourist office to use as a credit union (previous applications 05/3375 and 15/1 refer);

Ref. 16/794 – minor alterations to Ref. 15/1;

Ref. 15/1 – change of use from commercial and office use of existing buildings (constructed pursuant to Ref. 05/3375) to Block 1 – pharmacy, Block 4 – dental and GP, Block 5 – HSE primary care centre, Block 6 – public library and tourist office

Ref. 05/3375 – Mixed use development of 55 residential units and 2,900 sq.m of commercial/office residential development including new buildings and refurbishment of existing buildings.

Ref. 02/7274 – mixed use development of 61 residential units and 3,723 sq.m of commercial and civic development.

5.0 Planning Authority Decision

5.1. Planning Authority Reports

- 5.1.1. An initial report (Report/Phase 1) dated 25 January 2018 notes that the site consists of unoccupied structures and that the site has had a number of permissions. A planning history of the adjoining area is also outlined. It is noted that the site is zoned town centre and the type of site for the purposes of the Act is regeneration. The site area is noted as 1.2 ha and it is noted that the site being vacant or idle has adverse effects on existing amenities or reduces the amenity provided by existing public infrastructure and facilities in the area in which the site is situated or has adverse affects on the character of the area. It continues by stating that the site is in a neglected condition and is located on the Main Street of the town in the primary mixed use retail and commercial area at a very prominent location with significant street frontage. The derelict/incomplete buildings on the site are stated to degrade from the overall appearance of the area and it is recommended that Letter 1 is issued (Section 7(1) Notice) which was issued on 26 January 2018.
- 5.1.2. A second report (Report 2) signed and approved on 19 June 2018 notes the response received from the site owner to the Notice of Intent issued in January 2018 which confirmed site is owned by the owner outlined and setting out the proposed

planning applications/design process undergoing. The report then notes that works are being carried out to parts of the site under Ref. 17/168 and Ref. 17/1355 with parts of the site area towards Market Square appearing to be in the ownership of another landowner and therefore it is stated it should not have been included with the original Notice of Intent. It is stated that the majority of the site remains vacant and works do not appear to have commenced with the site considered to be vacant measured as 1.117 hectares with confirmation of land ownership required. A new Notice of Intent (Section 7(1) Notice) was considered to be necessary informing the landowner of the reassessment of the site boundary and inviting a new submission.

- 5.1.3. A third report (Report 2B) dated 11 September 2018 related to the second Notice of Intent issued on 21st June 2018. It is noted that no response was received to the second Notice of Intent (Section 7(1) Notice). The report outlines that the entire site within the new site area is considered vacant and idle with the area of the relevant vacant site measured at 1.117 hectares. It states that the sites neglected condition is considerably reducing the amenity of the area. It states that it is in a prime location in the centre of the town, is open and visible from the sides on Brewery Lane and Back Lane and from the rear. It states that there is a large unfinished development on the site that is unsightly and is causing a poor impression of the town centre one of the leading tourist areas of the town.
- 5.1.4. In relation to Section 6(6) the report refers to subsection (a) and states that the entire site is in a ruinous and neglected condition, is littered with the ruins of a stalled development. The unfinished buildings, it states, appear to have been abandoned and the half developed buildings have begun to deteriorate. The buildings have no windows or doors and the white plaster finish on some of the buildings to the front of the development has begun to discolour and chip away. It states that the buildings at the rear have no finish and have been left at block work stage. Weeds and shrubs are stated to be growing in and around the buildings, especially at the rear of the site where the least amount of development was completed. In relation to subsection (b) it states that given the east of access from Main Street the site is extremely likely to attract anti-social behaviour and groups of youths hanging around the town centre. It states that the site is extremely unsafe and is posing a constant health and safety risk in the town. In relation to sub-section (c) there is no evidence to show a

reduction in the number of habitable houses in the area. It is recommended that given that the site is in a neglected condition that the site should be placed on the Register under the provisions of Section 5(1)(b).

5.2. Planning Authority Notice

- 5.2.1. A Section 7(3) notice was issued by Wicklow County Council on 19th September 2018, stating their intention to enter lands included measuring 1.117ha at Market Place, 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. The Notice of entry states that the site is being entered on the Register in accordance with Section 5(1)(b) of the Act. In addition it states that in accordance with Section 6(6) of the Act that the PA has determined that the site has adverse affects on the character of the area for the purposes of this Part of the Act because the land or structures in the area are in a ruinous or neglected condition.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal are summarised as follows:

- Site originally a serious casualty of the financial crisis and since it has been acquired by appellant they have endeavoured to develop the site having regard to its importance to the centre of Rathdrum;
- Permission granted by WCC in 2015 & 2016 for a mixed use development of the existing buildings which it was originally intended to rehabilitate but having received permission deemed uneconomical to proceed as the extent of the remedial works provided excessively cost prohibitive;
- Permission was sought for demolition of previously constructed structures (2000-2008) and a new built development which was permitted (Ref. 18/87) and in final stages of agreement with the HSE to provide a mixed development including a primary care centre for the HSE and a library for WCC and intended to commence work before the end of the year to commence with demolition of existing structures;

- Since purchasing site in 2014 appellant active in relation to the development of the site and now on cusp of its commencement;
- Obligated for reasonable consideration in relation to the site given commencement so close and request site is not placed on the Register;

6.2. Planning Authority Response

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

- While permissions granted on the site in recent times, development has not commenced and the entire site has not been included for development in recent plans;
- Permission granted in 2016 never commenced and site remains vacant with owner outlining proposal to seek permission on part of site and remainder being progressed for residential;
- Proceeded with vacant site levy process as lodging of an application would not negate from the placing of a vacant site on the register and the site has been abandoned mid development and is in a ruinous and neglected condition.
- The site is extremely prominent in the TC and having an adverse effect on existing amenities in the TC;
- During second phase of Vacant Site investigations discovered that parts of the site originally included on the map issued were not in ownership of Pinturas and were not considered to be vacant with a second Notice of Intent issued amending the boundary;
- While permission has been granted recently, a live permission does not negate from the application of the levy and once the PA satisfied that the site is no longer vacant a Section 10 assessment would commence;
- Also noted that the applications lodged in recent years did not include the entire land holding with a large portion of the site to the rear not included in recent plans;

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:

- Appellant in final stages of negotiations with the HSE with a view to commencing construction early in the new year;
- Planned to be on site before now (Nov 2018), but legal negotiations between parties have been strung out considerably longer than anticipated and which relates to over 50% of remaining free site to the east and alongside Market Sq/Place.;
- Appellant recently instructed agent to commence design work on provision of a nursing home complex on remainder of the site with planning application to be lodged early in 2019;
- While accept construction has not commenced it is not for want of trying to find an economical solution for the site the larger portion of which is on verge of commencement with the site lain idle for some considerable years prior to appellant acquiring;
- Spirit of the 2015 Act is being addressed in that the site is imminently to go to development works and will benefit Rathdrum;
- Site idle for some time due to economics of situation and proved difficult to justify cost of construction in this location with a further penalty negatively effacing the already difficult situation;

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.

7.2. **Vacant or Idle**

7.2.1. In terms of subsection 5(1)(b)(i), that the site, or the majority of the site, is vacant or idle, I note the grounds of appeal on behalf of the site owner which refer to the proposed development of the lands and the extant permission and proposals for the remainder of the site. However I would note that the spirit of the legislation would provide that an intention to develop would not negate the application of the levy. It is clear from a visit to the site that the site does not include any existing use and therefore, I consider, notwithstanding the stated intention to commence development which is not questioned, 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 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.

7.3.2. Therefore these are the tests which determine whether or not the site being vacant or idle has adverse effects on existing amenities or reduces the amenity etc. The PA

outlines the condition of the site and examines the tests included in Section 6(6). I would note that meeting any one of the tests is sufficient and 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).

- 7.3.3. The first matter 6(6)(a) is whether the land or structures in the area were, or are, in a ruinous or neglected condition. The PA state that the unfinished buildings appear to have been abandoned and the half developed buildings have begun to deteriorate which they document in their report in respect of the damage done to those buildings which were near completion prior to the development being stalled which appears to have happened c.2008. It is clear from viewing the site that it accommodates a large number of structures which were in various stages of completion when the development stalled. Some of the buildings closer to Main Street were near completion before the development while others are only block work up to eaves level. I would note that the most recent permission granted provides for the demolition of 6 blocks on the site which are outlined in the site demolition plan which accompanied the application (Ref. 18/87). The blocks to the rear of the site are not included. What is very clear is that most if not all of the structures which have been effectively abandoned within the site are now in a neglected condition and in this regard it is clear and evident that the structures are in a neglected condition as per the test in Section 6(6)(a).
- 7.3.4. The second matter 6(6)(b) refers to anti-social behaviour which was or is taking place in the area. The PA states that given the ease of access off the Main Street that it is extremely likely to attract anti-social behaviour and groups of youths hanging around the town centre. It states that the site is extremely unsafe and is posing a constant health and safety risk in the town. While I consider that current condition of the buildings could potentially pose a health and safety risk, I would consider that most of the site is fenced and secured and I did not notice any directly visible evidence of anti-social behaviour. The Act expressly refers to anti-social behaviour which was or is taking place in the area. It does not refer to such activity which may take place in the future and therefore I do not consider that the site would meet this test.
- 7.3.5. There is no evidence to address part (c).

7.3.6. Therefore, given that the first test in Section 6(6) has been met, the site is a vacant site as defined by Section 5(1)(b)(ii).

8.0 Recommendation

I recommend that in accordance with section 9(5) of the Urban Regeneration and Housing Act 2015, the Board should confirm that the lands measuring 1.117 hectares at Market Place, Rathdrum Co. Wicklow was vacant or idle for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 19th September 2018 shall be confirmed.

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, and

(d) the neglected condition of the site and the neglected and ruinous structures thereon, which it is considered has adverse effects on existing amenities and on the character of the area,

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

Una Crosse
Senior Planning Inspector

February 2019