



An  
Bord  
Pleanála

## Inspector's Report ABP-302873-18

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<b>Type of Appeal</b>	Section 9 Appeal against section 7(3) Notice
<b>Location</b>	Former meat factory site at Royal Oak, Muine Bheag (Bagenalstown), Co. Carlow.
<b>Planning Authority</b>	Carlow County Council
<b>Planning Authority VSL Reg. Ref.</b>	VS-18-06
<b>Site Owner</b>	Patrick Hickey
<b>Planning Authority Decision</b>	Place on Register
<b>Date of Site Visit</b>	22 February 2019
<b>Inspector</b>	Una Crosse

## 1.0 Introduction

- 1.1. This appeal refers to a section 7(3) notice issued by Carlow County Council on 28<sup>h</sup> September 2018 under Reference VS-18-06, stating their intention to enter the site off Royal Oak Road (R724), Muine Bheag, Carlow 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) and 5(2) of the Act.

## 2.0 Site Location and Description

The site has a stated area of c.12 hectares and comprises a large area of land to the north of the Royal Oak Road (R724) and the south/southeast of the River Barrow. The site adjoins an existing residential development known as Chestnut Court to the east. To the south of the Royal Oak Road, which connects the town centre to the R448 (Old N9), there are industrial and warehouse units. The site itself effectively forms three parts. The western area of the site includes the site of the former meat factory which has been demolished but remnants of the structure, hardstanding and debris remain. There is poorly structured fencing adjoining the public road, set back from same somewhat with the site is very visible. The most western area of the site adjoining the River Barrow is greenfield. East of the former factory there is a triangular shaped site surrounded by trees is the site of the former Managers Residence which has been demolished. The remainder of the site to the east is effectively greenfield and is bounded by a stone wall which runs along the main road.

## 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 site is zoned Manufacturing, Tourism, enterprise and employment in the Muine Bheag/Royal Oak LAP 2017-2023 with area to northwest zoned amenity and open space. The zoning map includes 'M1' on the site with 'M1' in the LAP stating: '*To serve new development with adequate and appropriate waste water treatment*'.
- 3.2.2. Section 4.5 of the LAP deals with brownfield, vacant and derelict sites. It is stated that the Urban Regeneration and Housing Act 2015 provides for a levy on vacant sites and this is a key measure in implementing the Core Strategy by encouraging the development of such vacant sites. The redevelopment of vacant sites and buildings within the town core area is critical to the sustainable development and economic success of Muine Bheag. Achieving a critical mass of investment and development in the shortterm is essential to break the negative cycle of underdevelopment and to overcome the barriers to progress that have existed.
- 3.2.3. Objective ECO 6 states that it is an objective of the Council to provide for development of vacant sites in designated areas (residential land and/or regeneration land) and to encourage and facilitate the appropriate development and renewal of sites and areas in need of regeneration 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 house or of land for residential use or a mixture of residential and other uses. The LAP includes Map 4 which outlines potential areas for regeneration with the appeal site included as site 2 – approach into town from Royal Oak.

## **4.0 Planning History**

- 4.1. **Ref. 07/591** – Permission granted for a housing development of 202 dwellings, demolition of factory structure and manager's residence on a site of 8.83 hectares,

forming the first phase of an overall mixed use development to be completed on additional 3.58 ha to include a crèche.

- 4.2. **Ref. 05/402** – permission refused for a housing development on basis density was too high.

## 5.0 **Planning Authority Decision**

### 5.1. **Planning Authority Reports and Responses**

- 5.1.1. A site report which is dated 11 April 2018 (countersigned 12 April 2018) outlines the date of inspection (31 January & 10 April 2018), notes the site is c.12 hectares, that the land is regeneration, outlines that the northwest end of the site bounds the River Barrow and is within flood risk area (CFRAM mapping refers) with lands within flood plain zoned open space and amenity in the LAP. Northwest of site bounding River Barrow is within River Barrow and River Nore SAC. The site has been subject of a Dangerous structure file (DST09/01) with copies of documentation related to same attached. Notices have also been issued under Section 55 of Waste Management Act 1996 and Section 12 of the Local Govt. (Water Pollutions Acts) 1977-2007.
- 5.1.2. The site is described and is noted as previously being occupied by Fair Oak Foods Factory Complex and managers residence and it is noted that the facility ceased operation in the late 1990's with the factory and managers residence now demolished with further demolition and site clearance works required. It is stated that the site is neglected and unkempt and detracts from the amenity of the area on what is a key approach road to the town. The site is not secured from unauthorised access it is noted with temporary fencing falling over in places and is not adequate to prevent unauthorised access with the site considered a public health and safety risk.
- 5.1.3. Internal reports referenced note little or no works undertaken in last 12 months, Irish Water note no physical issued with water supply but that the wastewater treatment plant is overloaded, included on current IW investment plan but work has not commenced to increase capacity (March 2018). In terms of zoning it is stated that the site is zoned Manufacturing, Tourism, enterprise and employment in the Muine Bheag/Royal Oak LAP 2017-2023 with area to northwest zoned amenity and open

space. It is stated that the site is identified as potential area for regeneration on Map 4 in the LAP. The planning history of the site is outlined as is the ownership.

- 5.1.4. The conclusion and recommendation refer to Section 5, regeneration and outlined subsections (i)&(ii) of 5(1)(b) noting site is vacant and idle, that it occupies a prominent location on a key approach road into the town and is an area identified for regeneration and zoned. Considered that overall appearance of the site, its neglected condition, partly completed demolition/site clearance and demolition waste on site adversely effects the character and visual amenity of the area. Also noted that documentation on Dangerous Structures file (DST09/01) identified previous issues of vandalism at the complex and illegal trespass on the site. It is recommended that a Section 7(1) Notice is issued with same dated 30<sup>th</sup> May 2018 issued.
- 5.1.5. A report entitled Site Report No. 2 dated 16 August and co-signed on 20 August 2018 outlines some of information in first report but also noted that a further inspection was undertaken on 16 August 2018. It is noted that no response was received from the owner in respect of the Section 7(1) Notice. Conclusion and recommendation outlined is as per the conclusion and recommendation for the Section 7(1) notice outlined above with recommendation that site included on the Register and a Section 7(3) notice is issued with a note to state that the Section 7(3) Notice should be issued for regeneration land.

## 5.2. **Planning Authority Notice**

- 5.2.1. A Section 7(3) notice was issued by Wicklow County Council on 28<sup>th</sup> September 2018, stating their intention to the site off Royal Oak Road (R724), Muine Bheag, Carlow 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) and 5(2) of the Act.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The grounds of appeal are summarised as follows:

- Reference to Section 6(4) of the Act (housing need) noting that the entry on the register is not appropriate in circumstances where there is not a need for housing in the area given fact that house prices and levels of rent could not, applying a reasonable commercial test, sustain the development of the site having regard to building costs;
- Owner of the property cannot be expected to build houses, assuming there is a need, where there is no commercial demand;
- Such a situation would represent an abdication by and illegitimate transfer of responsibilities by the State to a private individual;
- Number of habitable houses for rent in the area not less than 5% of the total number of houses in the area with evidence available upon request;
- In terms of Section 6(5), not appropriate to enter site on register where the site is not capable of being serviced due to severe deficiencies in the services, including foul sewerage capacity, water supply and electrical supply;
- Physical conditions of the site is such that it will severely affect the provision of housing on the site with further evidence available if required;
- Site has not been vacant or idle for the 12 month period preceding the entry on the register as per Section 6(7);
- Factors outlined in Section 6(6) do not apply;
- Property should not be entered on the Register for these reasons.

### 6.2. Planning Authority Response

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

- Appeal refers to Section 6(4) of the Act in respect of housing need in the area however qualifying criteria for a site comprising regeneration land as set out in

Section 5(b) do not include a requirement to demonstrate a need for housing in the area;

- In terms of Section 6(5) where a site is serviced by public infrastructure and facilities, PA received a report from Irish Water which notes that the site is serviced by water infrastructure with no known physical issues which may affect development and in relation to wastewater capacity that Muinebheag and Leighlinbridge WWTP (Bagnelstown) which serves the site is overloaded and is included in current IW Investment Plan but work to increase capacity has yet to be carried out;
- No information provided in respect of deficiencies in relation to electrical services;
- No information provided to substantiate statement that site was not vacant or idle for 12-month period preceding the date of entry on the Register;
- On basis of information available to the PA it is noted that the former factory complex has been closed for over 10 years and since that time was subject of trespass, fire damage and vandalism;
- Council's finance department have confirmed commercial rates have not been paid for over 10 years;
- Demolition and site clearance works were commenced on site but not completed;
- Site is subject of a Dangerous Structures file (Ref. DST09/01);
- Site presents as neglected, unkempt and not in any use. Factory building and managers office demolished, floor slabs and demolition waste remain on the site;
- Report received from Council's Transportation Department notes that little or no works have been undertaken in the past 12 months on the site;

### **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:

- In terms of availability of wastewater services on the site, refer to minutes of pre-planning meeting dated 13/09/18 (attached as Appendix A) where Carlow Co. Co. Senior Engineer advises that wastewater treatment plant in Bagnelstown is

above capacity and that current upgrade in progress may take between 2-3 years to complete;

- In terms of suitability for housing refer to same minutes where Carlow Co. Co. Senior Planner advise that residential development not permitted on the site under the current zoning;
- Letter attached as Appendix B which stated that there will be no electrical power supply upgrade in place to service the site until 2021;
- Site purchased in September 2017 and in late 2017 contracted an architectural consultancy to begin preliminary design work and engaged with PA to agree suitable and commercially viable masterplan with process taking time as proposals put forward by appellant such as nursing home have been deemed unsuitable and proposal of a hotel development would be commercially unviable with 2 licenced premises in the town centre closing in last 2 years reinforcing this conclusion;
- Despite differing options with design of the scheme and clear lack of infrastructure available to the site appellant has continued to invest resources in preparing a masterplan for the development which will enhance the Royal Oak area and the town with masterplan draft attached as Appendix C and intention to lodge planning application for the 1<sup>st</sup> phase in the coming months with intention to develop as soon as permission granted and necessary services in place;

## **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. Process**



- 7.2.1. At the outset I would note that as outlined in Section 3.2 above, Objective ECO 6 states that it is an objective of the Council to provide for development of vacant sites in designated areas (residential land and/or regeneration land) and to encourage and facilitate the appropriate development and renewal of sites and areas in need of regeneration 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 house or of land for residential use or a mixture of residential and other uses. The LAP includes Map 4 which outlines potential areas for regeneration with part of the appeal site included as site 2 – approach into town from Royal Oak.
- 7.2.2. Of particular relevance I would suggest is that the site outlined as Site 2 includes a circle around the site of the former factory but does not include the remainder of the lands within the appellant's ownership and which are included in the map accompanying the Section 7(3) notice. As I will outline below, a large part of the site cannot be seen from the public road and is in pasture. I would therefore suggest to the Board that the inclusion of the entire area of the appeal site is not appropriate particularly as the Board have no provision to amend boundaries. In this regard I consider that it would be unreasonable to include a large area of the site on the Register that has not been designated in the LAP for regeneration purposes. I would therefore suggest that the Notice should be cancelled on this basis and the process could be recommenced by the planning authority on the basis of the site designated in the LAP.
- 7.2.3. There is also an issue pertaining in relation to the 12 month period prior to the placing of the site on the Register as per the Section 7(3) Notice currently appealed. Firstly, in respect of placing a site on the Register, Section 6(2) of the Act is very clear that a planning authority shall enter on the register a description including a map of any site in its functional area which was, in the opinion of the planning authority, a vacant site for the duration of the 12 months preceding the date of entry.
- 7.2.4. The subject site was placed on the Register on 28<sup>h</sup> September 2018 meaning that the relevant 12 month period would have commenced on 29<sup>th</sup> September 2017. I would note that the reports prepared by the planning authority refer to site inspections which informed their placing of the site on the register. In relation to the subject site it is stated in the report prepared to support the inclusion of the site on

the register (site report No. 2) that the site was inspected on 31 January 2001, 10 April 2018 and on 16 August 2018. Therefore, if the site was inspected for the first time for the purposes of the Vacant Site Levy process on 31 January 2018, notwithstanding what happened in respect of the Derelict Sites Notice, the planning authority cannot categorically state that in respect of the definition of vacant or idle in section 5(10)(b) of the Act that the site was vacant and idle on 29<sup>th</sup> September 2017 which would comprise the commencement of the 12-month period. I would also note an email attached to the file, from Ray Wickham A/Senior Engineer for the Council, which is dated 8 March 2018 and which states 'as far as I am aware little or no works have been undertaken in the past 12 months on this site'. This correspondence does not relate to a definitive site visit and is clearly vague in detail and therefore I consider cannot be relied upon.

- 7.2.5. While this may appear to be a tedious approach to the matter at hand, particularly given the history of the site prior to the appellant's ownership, the Act is very clear that the relevant period for consideration is the 12 month period preceding the date of entry. I would therefore suggest that it is incumbent on any planning authority to have details of inspections which can clearly indicate that in their opinion the site was vacant or idle for the 12 months preceding placing the site on the Register. I would therefore suggest that the Notice issued should be cancelled on the basis of these defects in the process and the process could be recommenced by the planning authority.
- 7.2.6. In relation to housing need which has been addressed in the appeal submission in respect of housing need and suitability, the appellant provides their grounds in respect of refuting these matters. However as is clear from the Section 7(3) Notice that the Notice was issued in respect of Section 5(1)(b) of the Act which relates to regeneration and where matters relating to housing need and suitability are not relevant criteria.
- 7.2.7. While it is my opinion that the Notice should be cancelled for the procedural reasons outlined above, if the board do not share this view, I will provide my opinion below in respect of the site in relation to the matters arising in Section 5(1)(b).

### 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, it is clear from a visit to the site that the site can be divided into two parts, as I address in relation to process and the regeneration site in Section 7.2 above. The former factory site to the west of the overall area includes the remnants of a partly demolished structure, hardstanding and debris and is not in use and it is quite clear that the site is vacant and idle. The remainder of the site appears to be in pasture but this is not clear if this is the case. Therefore I consider that in the absence of any evidence to the contrary that the site can be considered vacant or idle for the purposes of Section 5(1)(b)(i).

#### 7.4. Adverse Effects

7.4.1. 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.

7.4.2. 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.*

7.4.3. 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. 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). I would note that the PA do not specifically refer to these tests outlined in Section 6(6) but rather provide a number of statements in respect of the condition of the site. The appellant states that the provisions of Section 6(6) do not apply but does not go into any detail in this regard.

- 7.4.4. 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 it occupies a prominent location on a key approach road into the town and is an area identified for regeneration and zoned. Considered that overall appearance of the site, its neglected condition, partly completed demolition/site clearance and demolition waste on site adversely effects the character and visual amenity of the area. The test outlined in the Act (section 6(6)(a)) relates to the land or structures being in a ruinous or neglected condition. As I address in in sections 7.2 and 7.3 above, I consider that the site comprises three parts, the site of the former factory, site of former residence and the remainder of the lands which is in pasture. I consider that the former factory site, which includes the remnants of the former building and a lot of debris from the previous demolition and possibly the site of the former residence would comply with the provision of Section 6(6)(a) as they could be described as both ruinous and neglected. However, I do not consider that the remainder of the lands, which are in pasture and which I note are not directly visible from the public road, could be described as ruinous or neglected. In this regard I consider that my concerns outlined above, regarding the inclusion of the lands in pasture within the site boundary are relevant to the consideration of this matter and while part of the site would meet the test, the larger part of the site, arguably would not, and in this regard I consider that as I have outlined above in respect of process that the Notice should be cancelled.
- 7.4.5. The second matter 6(6)(b) refers to anti-social behaviour which was or is taking place in the area. The planning authority report notes that documentation on Dangerous Structures file (DST09/01) identified previous issues of vandalism at the complex and illegal trespass on the site. While it may have been previously subject of illegal trespass I do not consider that sufficient evidence has been provided by the planning authority to support such assertion for the 12 months preceding placing the site on the register.
- 7.4.6. There is no evidence to address part (c).

7.4.7. 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). However given my concerns regarding the process undertaken as outlined in Section 7.3 above that the vacancy of the site and its adverse effects are secondary to the procedural matters arising in this instance.

## 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 site off Royal Oak Road (R724), Muine Bheag, Carlow was vacant or idle for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 28<sup>th</sup> September 2018 shall be cancelled.

## 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 absence of sufficient evidence to support the contention that the site was vacant and idle for the 12 months preceding placing the site on the register, and

(e) the inclusion of lands within the boundary subject to the Section 7(3) Notice which is not within the area included in Map 4, potential areas for regeneration in the Muine Bheag/Royal Oak Local Area Plan, 2017-2023

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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Una Crosse  
Senior Planning Inspector

March 2019