



An
Bord
Pleanála

Inspector's Report ABP-302934-18

Type of Appeal	Section 9 Appeal against section 7(3) Notice
Location	Lands at Thomas Traynor Road (R725), Tullow, Co. Carlow.
Planning Authority	Carlow County Council
Planning Authority VSL Reg. Ref.	VS-18-01
Site Owner	George Murphy
Planning Authority Decision	Place on Register
Date of Site Visit	22 February 2019
Inspector	Una Crosse

1.0 Introduction

- 1.1. This appeal refers to a section 7(3) notice issued by Carlow County Council on 17^h October 2018 under Reference VS-18-01, stating their intention to enter the site at Thomas Traynor Road (R725), Tullow, Co. 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

- 2.1. Site has a stated area of 0.21 hectares and comprises a flat area of ground partly covered vegetated and partly covered in hardcore and adjoining the Thomas Traynor Road in the town centre of Tullow. The site is adjoined by a petrol station and a warehouse unit housing an interiors business with the River Slaney to the rear. The area within the vicinity of the site is industrial/commercial in nature.

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 for Town Centre Activities in the Tullow LAP 2017-2023 and is located with Zone A, liable to flooding.

- 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.
- 3.2.3. Objective ECO 7 states that it is an objective of the Council to provide for development of vacant sites in designated areas (residential/infill land and/or identified as potential 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.
- 3.2.4. The LAP includes Map 4 which identifies Town centre opportunity sites. Site 2 which is identified in Map 4 includes the subject site. The LAP refers to Site 2 as the Thomas Traynor Road and describes same as follows: this site is located on both sides of the Thomas Traynor Road, near its junction with the N81, to the south of the River Slaney. The site currently consists of a number of warehouse / light industrial units alongside the river, and Wynne's grain store facility is along the southern side of this approach road towards the N81. The site is considered to be a key opportunity site and should be prioritised for development. The site is strategically located along a main approach to the town centre and the areas redevelopment would allow for replacement of some of the existing buildings with a high quality development which would improve the character and appearance of the area.
- 3.2.5. Map 5 sets out the potential regeneration sites in Tullow with the appeal site included within Site 2.

4.0 Planning History

- 4.1. No recent planning history.
- 4.2. Noted that an enforcement file was opened under UD12/29 in relation to a car wash facility with the case now closed.

5.0 Planning Authority Decision

5.1. Planning Authority Reports and Responses

- 5.1.1. There is a referral report on file which is not dated but provides maps and aerial photos and seeks to refer the site to internal departments and IW with reports received stating that site is serviced and prominent (Area Engineer) and from IW that site is serviced to enable development.
- 5.1.2. A site report which is dated and counter signed 12 March 2018 outlines the dates of inspection (23 January & 06 March 2018), notes the site is c.0.22 hectares, that the land is regeneration, outlines that the site is within a flood risk area associated with the River Slaney which borders its rear (NE) boundary (CFRAM mapping refers). Appendix 3 of LAP identified site as within Opportunity Site 2 (OS2) and partially within flood zone A/B and or which there is potential for large-scale redevelopment. Section 6.2 notes regarding OS2 that it is split either side of Thomas Traynor Road with lands on the river side (north) of the road low lying. River Slaney is a c.SAC.
- 5.1.3. The site is described and is noted as unoccupied and idle with no current or recent use with no buildings on the site. Google imagery used indicated site previously occupied by 'Tullow Slaney Commercial' and as a car wash facility and a storage area. Site includes areas of hardstanding now overgrown and littered in parts and the boundary is secured with palisade and mesh type security fencing. Truck container placed on site between time of the two site visits and appears to be three disused fuel containers on the site with a sign on the entrance gates to the site from the public road advertising the site for rent.
- 5.1.4. Internal reports referenced (a number outlined in section 5.1.4 above) with Water Services Department stating that site can be readily serviced for both water and waste water with no restrictions on development. Noted Tullow WWTP is over capacity with upgrade part of IW Investment Plan. In terms of zoning it is stated the site is zoned town centre activities in the Tullow LAP 2017-2023 with the planning history outlined as is the ownership. Noted that a previous enforcement case in respect of a car wash facility (UD12/29) is now closed.
- 5.1.5. The conclusion and recommendation refer to Section 5, regeneration and outlined subsections (i)&(ii) of 5(1)(b) noting site presents as 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 for A – town centre activities. Considered that neglected condition and appearance of the site, overgrown and littered in parts and fenced off from the public road detracts from the character and visual amenity of the area. It is recommended that a Section 7(1) Notice is issued with same dated 18th May 2018 issued.

- 5.1.6. A report entitled Site Report No. 2 dated 10 October 2018 and co-signed on 11 October 2018 includes some of the information in the first report but also noted that a further inspection was undertaken on 5th October 2018. It is noted that no response was received from the owner in respect of the Section 7(1) Notice. It is stated that on the follow up inspection on 5th October 2018 that a car wash facility is operating at the southern corner of the site adjoining the public road and includes a number of advertising signs along the roadside boundary and a truck container is being used for staff facilities/storage. It is noted that it does not appear to have the benefit of planning permission and the provisions of Section 6(7) of the Act applies. It is stated that notwithstanding same, majority of the site remains vacant and idle. The site includes areas of hardstanding, overgrown and littered in parts and the boundary is fenced. Conclusion and recommendation outlined repeats same with recommendation that site is 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 Carlow County Council on 17th October 2018, stating their intention to the site at Thomas Traynor Road (R725), Tullow, Co. 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:

- Site is currently occupied by 2 tenants;
- Gheorghe Burcea (Carlow Tyre Centre) operating a car wash under a 4 year 9 month lease from 4/July/2018 and Sisk building contractors who moved in on 26 October 2019 for a number of months while completing a building contract in Tullow;
- Site is fully occupied and will be for foreseeable future.

6.2. Planning Authority Response

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

- Appeal notes occupation of site by 2 tenants including car wash and building contractor with records showing location and layout of car wash has no planning permission with provisions of Section 6(7) considered;
- At time of site inspection on 5/10/18 majority of site was observed to be vacant and idle;
- PA carried out follow up inspection on 3/12/2018 with photographs attached which identify that part of the site being used as a construction compound which appears to be in connection with works being carried out to Slaney Bridge in the town (160m SE);
- Appeal details building contractors occupying site since 26/10/18 referring to occupancy as a temporary arrangement for a number of months;
- Use of site temporarily as a construction compound does not constitute a substantive basis to remove site from the Register with planning status of use as a construction compound requiring attention under Section 6(7) as no record of permission for such a use;
- Construction compound would not appear to constitute exempted development on basis of provision of Class 17 of Part 1 of Schedule 2 of PDA Regulations

2001 as amended as it is not on or adjoining land where development is taking place;

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:

- Site currently occupied by 2 tenants, Sisk on a temporary basis while carrying out works to the Bridge and a car wash which is let to Barry G Burcew;
- Car wash in existence for over 20 years as appellant owned the service station and operated the car wash as part of the Esso service station and when service station sold to Fraser Oils, they rented the carwash bay for the time they operated the service station;
- Car wash was not in use from April 2017-August 2018 when it was let to current tenant who has a 4 year 9 month lease;
- Remainder of site was rented for a time to a car dealer until April 2017 when they ceased trading and they had used the car wash while at the site;
- Permission previously obtained for mixed use residential/retail scheme (Ref. 05/739) which expired in 2011 with site initially sold but not completed with planning paid for and would reconsider the development again if permission was reinstated and planning fees waived;
- If Council want to meet to discuss open to meeting them and would consider car sales yard or mixed use development depending on costs and market;

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. An issue arises 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.

7.2.2. The subject site was placed on the Register on 17th October 2018 meaning that the relevant 12 month period would have commenced on 18th October 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 23 January 2018, 6 April 2018 and on 5 October 2018. Therefore, if the site was inspected for the first time for the purposes of the Vacant Site Levy process on 23 January 2018 the planning authority cannot categorically state that in respect of the definition of vacant or idle in section 5(1)(b) of the Act that the site was vacant and idle on 18th October 2017 which would comprise the commencement of the 12-month period.

7.2.3. While this may appear to be a tedious approach to the matter at hand 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 subject to the decision of the Board that the process could be recommenced.

7.3. **Vacant or Idle**

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 current use of the site as a car wash and the history of same as outlined and a construction compound with the appellant stating that Gheorghe Burcea (Carlow

Tyre Centre)/Barry G Burcew operating a car wash under a 4 year 9 month lease from 4/July/2018 and Sisk building contractors who moved in on 26 October 2019 for a number of months while completing a building contract in Tullow. I would note that the car wash use predates the site being placed on the Register however as noted by the PA this use does not have the benefit of permission and therefore cannot be considered under the provisions of Section 6(7).

- 7.3.1. I consider that notwithstanding that the existing uses may not negate vacancy that the defects in the process, as outlined above, provide that it cannot be categorically determined that the site may be vacant or idle for the purposes of Section 5(1)(b)(i) for the 12 months preceding the date of entry on the Register.

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. 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.

- 7.4.2. 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. 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.

- 7.4.3. 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 it occupies a prominent location on a key approach road into the town and is an area identified for regeneration and zoned. They state further that the neglected condition and appearance of the site, overgrown and littered in parts and fenced off from the public road detracts from the character and visual amenity of the area. While on my visit the site was in occupation by the car wash and construction compound the photographs attached to the report which recommended placing on the register show the site and while the car wash occupies part of the site, the rear of the site is slightly overgrown but I do not consider that this could be considered neglected. In this regard I do not consider that the site meets the first test outlined in Section 6(6)(a).
- 7.4.4. The second matter 6(6)(b) refers to anti-social behaviour which was or is taking place in the area. I do not consider that any evidence has been provided by the planning authority to support such assertion for the 12 months preceding placing the site on the register and therefore I do not consider that the site meets the test outlined in Section 6(6)(b).
- 7.4.5. There is no evidence to address part (c).
- 7.4.6. Therefore, I do not consider that any of the tests in Section 6(6) have been met, I do not consider that the site is a vacant site as defined by Section 5(1)(b)(ii). Furthermore, given my concerns regarding the process undertaken as outlined in Section 7.3 above together with the procedural issue outlined, I do not consider that the site is vacant or idle.

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 at Thomas Traynor Road (R725), Tullow, Co. Carlow was vacant or idle for the 12 months concerned.

Therefore, the entry on the Vacant Sites Register on the 17th October 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 month period preceding the date it was placed on the register, and

(e) the condition of the site, while including an area of vegetation is not neglected and does not display any visible evidence of anti-social behaviour and therefore it is considered that it 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

March 2019