



An
Bord
Pleanála

Inspector's Report ABP-303495-19

Type of Appeal	Section 9 Appeal against section 7(3) Notice.
Location	John's Green, Kilkenny.
Planning Authority	Kilkenny County Council.
Planning Authority VSL Reg. Ref.	VSR19-1.
Site Owner	City Cinemas Ltd.
Date of Site Visit	19 April 2019.
Inspector	Stephen Rhys Thomas.

1.0 Introduction

- 1.1. This appeal refers to a section 7(3) notice issued by Kilkenny County Council, stating their intention to enter a site at John's Green, Kilkenny on the Vacant Sites Register (VSR) in accordance with the provisions of section 6(2) of the Urban Regeneration and Housing Act 2015.

2.0 Site Location and Description

- 2.1. The site is located in the centre of Kilkenny City at John's Green. Wolfe Tone Street runs along the southern boundary of the site and a large public square, John's Green, is located to the east. The former Waterford and Maryborough Branch railway line, which is elevated, forms the rear or northern boundary to the site. Commercial buildings and a factory outlet are located to the west of the site. A high and notable coursed stone wall provides the southern and eastern boundaries to the public realm. There are two buildings of note on site, a gate lodge and the former County Infirmary, both are in poor repair. The overall site has been cleared and there are a number of planted areas and mature trees. The site interior and the buildings on site are readily visible from the street.

3.0 Statutory Context

3.1. Urban Regeneration and Housing Act 2015 (as amended)

- 3.1.1. The Notice issued under Section 7(3) of the Act states that the planning authority is of the opinion that the site referenced is a vacant site. The Notice is dated 31 December 2018 and is accompanied by a map outlining the extent of the site to which the Notice relates.

3.2. Development Plan Policy

- 3.3. The Kilkenny City and Environs Development plan 2014-2020 is the operative development plan. The site is located on lands that are subject to zoning General Business – 'Objective: To provide for general development'.

The site is located within the Michael Street/Wolfe Tone Street Architectural Conservation Area.

Objective 3A To promote the redevelopment and renewal of areas identified having regard to the core strategy, that are in need of regeneration, in order to prevent—

- (i) adverse effects on existing amenities in such areas, in particular as a result of the ruinous or neglected condition of any land,
- (ii) urban blight and decay,
- (iii) anti-social behaviour, or
- (iv) a shortage of habitable houses or of land suitable for residential use or a mixture of residential and other uses.

The levy may be applied to all identified ‘Regeneration’ land and ‘Residential’ land in existing land use zonings. In particular, the areas covered by the following zoning objectives are considered to constitute regeneration land:

- General Business
- Mixed Use
- Business Park

Other regeneration zonings may also be identified in any relevant Local Area Plans.

4.0 Planning History

4.1. Site:

PA ref **04/990079**. Site redevelopment including renovation and extension of hostel building and provision of 44 apartments and other commercial uses.

4.2. Nearby Sites:

PA ref **15/76** and ABP ref **PL10.245155**. Demolition of a commercial building and construction of a 10 screen multiplex cinema and all ancillary site development works. November 2015.

5.0 Planning Authority Decision

- 5.1. **Planning Authority Notice:** Kilkenny County Council advised the site owner that the subject site (Planning Authority site ref. VSR19-1) had been identified as a vacant site. The notice, issued pursuant to section 7 of the Act and dated 31 December

2018, stated that particulars of the site have been entered on the Vacant Sites Register.

- 5.2. **Register of Vacant Sites Report:** The site is zoned General Business in the Kilkenny City and Environs Development plan 2014-2020, note Variation 4. The site is classified as regeneration land and a statement indicates that the site has been vacant or idle for the last 12 months. The site has an adverse effect on the character of John's Green. The site was inspected on the 9 October 2018. The report is accompanied by a photograph and site location map.
- 5.3. **Register of Vacant Sites Submissions Report:** The redevelopment of the site is not dependant on the completion of the cinema site. Though the foul sewer to service the cinema cite passes through these lands, the connection does not preclude development. The site continues to impact the character of the area and remains a vacant site. Section 7(3) notice to issue.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The land owner has submitted an appeal to the Board, against the decision of Kilkenny County Council to enter the subject site on the Register. The grounds of the appeal can be summarised as follows:
- The owner states the subject site forms part of the cinema site as a whole and is being used for part of the works.
 - The owner has invested almost €8 million in the development and growth of Kilkenny City and plans further development for the area.
 - It is the intention of the owner to fix broken slates and cracked windows soon.

The owner includes copies of the Notice and the initial submission made to the planning authority.

6.2. Planning Authority Response

In this instance the criteria for a regeneration site does not include whether the site can be serviced, nor does the site rely on the completion of the cinema site in terms of infrastructure.

It is noted that the owner intends to repair buildings on the lands, but the site continues to impact on the character of the area. There has been a reduction in the number of people living in the area, from 155 to 145 (Small Area Statistics Census 2011-2016) and housing stock has also reduced from 85 to 83.

The site has been vacant since 2004, when a mixed use development was first permitted.

6.3. Further Responses

None.

7.0 Assessment

- 7.1. An appeal under section 9 of the Act, requires that the burden of showing that the site or a majority of the site was not vacant or idle 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 vacant or idle 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 on the Kilkenny County Council VSR on the 31 December 2018.
- 7.2. By reference to the planning authority, it is stated that the subject site comprises regeneration land for the purposes of the Vacant Site Levy. The subject site is located in an area zoned General Business – ‘Objective: To provide for general development.’ in the current Development Plan. Objective 3A of the plan sets out to promote the redevelopment and renewal of areas identified having regard to the core strategy, that are in need of regeneration. My assessment takes into account the characteristics of the site in the context of Section 5(1)(b) regeneration land.
- 7.3. The appellant states that the site forms a part of a redevelopment site to the north and is used for the works to that site. When the cinema scheme is complete, plans will be made for the subject lands and the buildings on site will be repaired in the near future. The planning authority note that the route of foul water services passes through the site but regeneration lands are not dependant on servicing requirements. In addition, the planning authority reiterate their reasoning for placement of the site on the register and conclude that the site should remain.

7.4. 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.

7.5. Section 6(6) of the Act provides the parameters by which the 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.

The owner has accepted that repairs should be made to the buildings on the site and intends to do so in the near future. The owner has not addressed each of the criteria for a regeneration site in turn, I however, intend to do so in the following sections.

7.6. **Vacant or Idle**

7.6.1. In terms of part (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 that state the lands were used for the works associated with the cinema site to north. It may have been possible but unlikely that the appeal site performed the role of a construction compound for the development of the cinema site. But this is hard to comprehend as the two sites are not adjacent and movement between them would have been quite difficult. In any case, I didn't observe any obvious signs of construction works either on the day of my site visit or in the photographs submitted by the planning authority. The owner

has not provided any evidence to show that the site acted as a construction compound either. I note however, that the owner's initial submission to the Council indicates that the site provided a route for foul water services, in my opinion this does not bring the site in to full and beneficial use. The site has the appearance of no active use for some time, and according to the planning authority the inactivity of the site has been thus for the 12 month period and since before permission for its redevelopment was granted in 2004.

7.6.2. The owner has stated an intention to repair the existing damage to the properties on the site, but this has not occurred to date. Consequently, the condition of the site continues to deteriorate. The planning authority have stated that the site has been a vacant site for the 12 months concerned and also refer to the vacant condition of the site since a mixed use planning permission was granted in 2004. I am satisfied that from my own observations of the site and the statements and supporting information from the planning authority that the site has remained vacant or idle for at the very least the relevant period of 12 months and most likely considerably longer. These factors and others render the lands to be a vacant site for the purposes of the 2015 Act.

7.7. Adverse effects amenities/character of the area

7.7.1. The first matter is that of the '*land or structures in the area were, or are, in a ruinous or neglected condition*'. The owner's intention to repair damage to the buildings on site is welcomed. However, this does not alter the present or past state of the buildings on the site, which are not ruinous but are in a neglected state. The site boundary, a stout coursed stone wall is in good repair and adds character to the area. Conversely, the neglected condition of the buildings within the site that are easily viewed from the public realm detract from the character of the area. The site therefore accords with section 6(6)(a) of the 2015 Act.

7.7.2. In relation to Section 6(6)(b) '*anti-social behaviour was or is taking place in the area*', I note that there was no evidence of graffiti on the structures of the appeal site and there was no evidence of litter. In terms of the final consideration Section 6(6)(c), the planning authority have stated that there has been a fall in population between the 2011 and 2016 census periods. The population for the Small Area (097062015) fell from 155 to 145 persons. Consequently, there has been a reduction in the number of

people living in the area, but how this is attributed to the existence of the site and its condition is unclear. In my view, the site meets the first parameter, that of neglect, and given the inclusion of 'or' in the Act there is no requirement to meet all three. The site should be considered a vacant site for the purposes of the Act. I am satisfied that the entry of the subject site on the Vacant Sites Register of Kilkenny County Council should be confirmed.

- 7.8. With reference to the statements made by the owner with respect to making repairs and advancing a development proposal for the lands in question. The Board may wish to note that under section 10 of the 2015 Act, the obligation to notify the planning authority of any changes in the status of the site is on the owner, as follows:

(1) The owner of a vacant site that stands entered on the register under section 6 (2) shall notify the planning authority in whose functional area the site is located if it is no longer vacant or idle.

(2) If, at any time, a planning authority is satisfied that a site that stands entered on the register under section 6 (2) is no longer a vacant site it shall cancel the entry on the register in respect of that site.

Therefore, it is in the owner's power to provide suitable evidence to satisfy the planning authority that the site is no longer vacant or idle and cancel the entry of the site on the register.

- 7.9. The site is zoned for a use that includes regeneration. Given the foregoing, I conclude that the majority of the site was vacant or idle in accordance with section 5(1)(b) and (6)(6) of the 2015 Act. I am satisfied that the entry of the subject site on the Vacant Sites Register of Kilkenny County Council should be confirmed.

8.0 Recommendation

- 8.1. I recommend that in accordance with section 9(5) of the Urban Regeneration and Housing Act 2015, the Board should confirm the Notice stating that the site at John's Green, Kilkenny, was a vacant site for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 31 December 2018 shall be deemed to take effect from that date.

9.0 Reasons and Considerations

9.1. 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 Inspector,
- (d) The vacant and idle nature of the site and the resultant adverse effects on the character of the area resulting from the neglected condition of buildings on the site, and that insufficient reason is put forward to cancel entry on the Vacant Sites Register,

the Board is satisfied that the site was vacant or idle for the relevant period.

Stephen Rhys Thomas
Planning Inspector

20 May 2019