



An
Bord
Pleanála

Inspector's Report ABP-303544-19

Type of Appeal	Section 9 Appeal against section 7(3) Notice.
Location	Margaretsfield, Callan Road, Kilkenny.
Planning Authority	Kilkenny County Council.
Planning Authority VSL Reg. Ref.	VSR19-2.
Site Owner	Denis Treacy and John Treacy.
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 Margaretsfield, Callan Road, Kilkenny on to 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 at Margaretsfield, on lands south of Seville Grove, a housing estate south west of Kilkenny City off the Callan Road, N76. The brownfield site comprises the previously cleared and levelled lands adjacent to phase 1 of Seville Grove to the north. The site is broadly level and also includes a small portion of informal amenity space laid out as a playing pitch and covered seating area associated with the completed housing estate. The lands contain a large construction compound with machinery and site offices. The overall site is fenced off and secure. The foundations of houses have been recently poured and the site is an active construction site at present.

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

- 3.2.1. 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 Phase 1 Residential – ‘Objective: To protect, provide and improve residential amenities’.
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. Subject Site:

PA ref **06/1089**. Permission for 81 residential units. Permission was granted in 2012 for an extension of duration of the appropriate period and further extended in 2017, until December 2021.

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. VSR19-2) 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 Phase 1 Residential in the Kilkenny City and Environs Development plan 2014-2020, note Variation 4. The site is classified as residential land and has been vacant or idle for the last 12 months, the site was visited on 10 October 2018. The site is in an area in need of housing,

the site is suitable for housing and the majority of the site was vacant/idle. The report is accompanied by a photograph and site location map.

- 5.3. **Register of Vacant Sites Submissions Report:** Until the site is brought into active use it remains a vacant site. Section 6(4) is examined and the site is considered to meet the requirements of housing need. The site continues to be a vacant site for the duration of 12 months. 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 appellant outlines a long list of correspondence made to the Council in a chronological order. The letters refer to ongoing negotiations between land owner, Respond and Kilkenny County Council Housing Section concerning agreement on social housing, from December 2016 to March 2019. This issue forms the basis for the delay in bringing the site forward for development. However, these ongoing negotiations should be considered as activity concerning the site and so it was not vacant or idle and does not meet the requirements of section 5(1)(a)(iii) of the 2015 Act. In addition, it is the Council's inactivity and unwillingness to conclude negotiations that delayed the construction of houses.
- The lands are currently an active construction site.

The appeal is accompanied by the Section 7(3) and 7(1) Notices, Grant of Planning Permission, Commencement Notice, letters from Respond dated February 2018 and January 2019.

6.2. Planning Authority Response

Given that the site is located on residentially zoned lands section 6(4) and 6(5) of the 2015 Act apply, in this regard all requirements of need and suitability are met. The planning authority have submitted their assessment of housing need report for Kilkenny that features detailed statistics with regard to house prices, rents, social

housing support and that the number of houses for sale or rent in the area as less than 5%.

6.3. Further Responses

The appellant reiterates their efforts to agree the provision of 32 social housing units on the site and construction should begin shortly, the commencement notice was entered onto the register February 2019. The appellant is committed to the principles and spirit of the 2015 Act, with the delivery of housing units in the near future. There is criticism of the Council not entering onto the register other more suitable sites in the vicinity.

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 report, it is stated that the subject site comprises residential land for the purposes of the Vacant Site Levy. The subject site is located in an area zoned Phase 1 Residential – ‘Objective: To protect, provide and improve residential amenities’ 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. The levy may be applied to all identified ‘Regeneration’ land and ‘Residential’ land in existing land use zonings. My assessment takes into account the characteristics of the site in the context of Section 5(1)(a) residential land.
- 7.3. The appellant states that negotiations have been ongoing since 2016 with Kilkenny County Council Housing Department to reach agreement concerning social housing. Planning permission has been extended until 2021, but delays attributed to the Council have stalled development of the site. The developer has however, started

construction of houses on the site on foot of a valid commencement notice dated 13 February 2019.

7.4. Vacant/Idle

- 7.4.1. The 2015 Act (as amended) requires the Board on appeal to look back in time at the site and determine if the site was vacant or idle, section 9(1) states.

(2) On an appeal under this section the burden of showing that the site was not a vacant site for the duration of the 12 months concerned is on the owner of the site.

(3) Where the Board determines that a site was not a vacant site 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 in accordance with section 6 (2) it shall give written notice to the planning authority who shall cancel the entry on the register in respect of that site.

- 7.4.2. The relevant time period for this appeal extends 12 months back from the date on which the site was entered on the register, in this instance 31 December 2018. I note that the planning authority have stated that the site has been vacant for the duration of 12 months and I also note a site inspection date of 10 October 2018. Though it is helpful that there is a clear chronology to conform site visits to provide a definitive assessment of the duration of twelve months, it is acceptable to rely on the planning authority's statement that the site was vacant/idle in this instance. From my observations of the site and the records of the planning authority, I am satisfied that the site has been in the same or similar condition for some time. In this regard the appellant has strongly indicated that it was the ongoing negotiations since 2016 with the Council regarding the provision of social housing that has delayed and prevented the commencement of any works on the site. From this, I conclude that the site has indeed been inactive or idle for the relevant period.

- 7.4.3. In addition, I note the appellants comments in referring to the planning process and negotiations with the Council as actions which should render the site active. However, the 2015 Act does not indicate that administrative activity in relation to a site, such as obtaining planning permission or negotiating matters concerned with social housing, should be considered to deem a site not vacant or idle. I do not

consider that the activities listed by the appellant comprise either site works or a permitted and ongoing use of the lands during the relevant period.

7.4.4. Recent Construction Activity - The appellant states that planning permission exists for the site, a commencement notice has been submitted and construction work will start soon, early 2019. The site has a planning permission and works are underway to implement the permitted development of 81 houses. I note that the planning authority state that the site was vacant or idle for the 12 months previous to the entry on the register (31 December 2018) and was vacant or idle on the date of their site visit in October 2018. On the day of my site visit I observed that significant construction activity had commenced on site and that works are ongoing. Incidentally, a small portion of the vacant site outlined by the planning authority, at the north western extremity, functions as a playing pitch and sheltered seating area.

7.4.5. From the evidence received from the Council that a commencement notice had been entered on the building control register (13 February 2019) and statements made by the appellant that construction works would start in 2019, I conclude that the site was indeed vacant or idle for the duration of 12 months and was still a vacant site when entered on the register. However, in my mind the site can no longer be classified as vacant or idle because significant construction works are currently underway to implement a planning permission for housing. The 2015 Act however, provides no mechanism for the Board to consider full and beneficial use of a site after entry on the register, including such uses as construction on foot of a planning permission. The site should be considered vacant or idle for the relevant period concerned, despite no longer being vacant or idle on the date of my site visit, 19 April 2019.

7.4.6. 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.

Consequently, 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. Should the Board decide to confirm the entry of the site on the register as per my recommendation, it may be appropriate to advise the appellant of their obligations under section 10 of the 2015 Act. This information could be conveyed to the appellant by way of a note attached to the Board's Direction that references section 10 of the 2015 Act in full.

7.5. Housing need and suitability

- 7.5.1. The appellant has not appealed the need for housing in the area or if the site is suitable for housing. I am satisfied that the information presented by the planning authority in relation to sections 6(4) and 6(5) of the 2015 Act is evidence based and a fair assessment of the need for and suitability of the site for housing. I am also mindful of the planning status of the site; it is zoned for residential uses and there is an extant permission for housing on the site. Furthermore, I note that houses are currently under construction.
- 7.5.2. I am satisfied that the site meets the criteria for inclusion on the register as referenced by section 6(4) and 6(5) of the 2015 Act and consequently fulfils the requirements of 5(1)(a)(i) and (ii) for land upon which residential uses are permitted. The placement of a site on the register requires three criteria to be fulfilled under section 5(1)(a)(i), (ii) and (iii) of the 2015 Act and I am satisfied that this is the case.
- 7.6. The site is zoned for residential purposes. Given the foregoing, I conclude that the site was a vacant site in accordance with section 5(1)(a) 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 (as amended), the Board should confirm the entry on the register of site (VSR19-2) Margaretsfield, Callan Road, 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 Planning Inspector,
- (d) That the site was a vacant site by virtue of the lack of any discernible use having taken place during the relevant time period,

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

Stephen Rhys Thomas
Planning Inspector

1 May 2019