



An
Bord
Pleanála

Inspector's Report ABP-303555-19

Type of Appeal	Section 9 Appeal against section 7(3) Notice.
Location	Lands at Bolton Green, Callan, County Kilkenny.
Planning Authority	Kilkenny County Council.
Planning Authority VSL Reg. Ref.	VSR19-17.
Site Owner	Bolton Homes Limited.
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 the Lands at Bolton Green, Callan, County 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 appeal site is located on the southern fringes of Callan in south County Kilkenny. The site comprises an unfinished housing estate to the rear of Roselawn, a standard suburban type housing estate accessed from the R698. The appeal site can be accessed from the Roselawn Estate. At present the appeal site is hoarded off and also fenced behind temporary steel mesh fencing from the R698. The site is overgrown, but the outline of service roads can be made out and the foundations and footings of a number of houses is apparent. In the northern corner of the site is located a terrace of three houses mostly complete but boarded up and unoccupied.

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 **Callan Local Area Plan 2019** is currently the operative development plan. The majority of the site is located on lands that are subject to zoning Low Density Residential – Assumed 10 units per Ha. This zoning allows for new residential development at a lower density and services incidental thereto. This zoning reflects the historic densities which exist away from the town centre. While housing is the primary use in this zone, childcare facilities, nursing homes, independent/semi-independent living units for older people and recreation can also be considered. A masterplan approach is identified as necessary for development at the Rear of Bolton Wood.

3.4. A smaller portion of the site is subject to zoning Industrial (Bolton Wood Employment Zone) and highlighted in section 10.6.4 of the LAP as follows:

A Masterplan approach is required for the area to the rear of Bolton Wood. This Masterplan will focus on achieving high quality industrial development, layout of buildings and high standards of infrastructure. Masterplan proposals must to be submitted and agreed with Kilkenny County Council in advance of any applications. The proposed design should:

- identify linkages with development in the surrounding area with particular regard to the need to deliver wider connections in the town; and
- Identify measures to achieve zero or low carbon development, through the integration of renewable energy proposals and energy efficient design.

The southern section of the site is also crossed by a **Road Improvement** objective.

Section 2.3.10 of the current LAP entitled **Vacant Site Levy**, states the following:

The Urban Regeneration and Housing Act 2015 introduced the Vacant Site Levy as an active land management tool that can be used by local authorities, in combination with other incentives, to achieve rejuvenation priorities of the Region as set out in the NPF. The Act enables local authorities to provide, as a specific objective in County development plans and local area plans, for the development, redevelopment and reuse of vacant sites in specific locations within urban areas where they consider it to be beneficial towards securing the objectives of the relevant core strategy, housing strategy and retail strategy of development plans.

The Levy is an integral part of the development planning process to incentivise the development of vacant or idle sites identified by planning authorities as “regeneration land” or “residential land”, with a view to bringing such sites into beneficial use. It can be imposed by planning authorities under certain conditions in designated areas where sites remain vacant and site owners/ developers fail to bring forward reasonable proposals, without good reason, for the development/reuse of such property in line with the provisions of the relevant local area or development plan.

The Callan LAP promotes, encourages and facilitates the appropriate development of sites identified as “regeneration land” and “residential land” 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 houses or of land suitable for residential use or a mixture of residential and other uses

The levy can be applied on land designated as either “residential” or “regeneration”. For the purposes of implementing the levy, the following zones are designated:

- Residential: Existing Residential, New Residential & Low Density Residential
- Regeneration: General Business, Industrial

These zones will be examined to determine if there are sites where the Vacant Site Levy is applicable under the provisions of Urban Housing and Regeneration Act 2015 and all associated regulations and guidance.

Strategic Objective 1: It is an objective of Kilkenny County Council to identify the individual vacant sites in the town for regeneration and housing and establish and maintain a register of vacant sites (entitled the vacant sites register) in the plan area for the purpose of the Vacant Site Levy (Urban Regeneration and Housing Act 2015).

The Board should note that at the time the site was placed on the Register, the 2009 Callan LAP was in place, extended until 15 February 2020. In this plan the entire site was located on lands zoned Residential and lands to the south were zoned Industrial.

4.0 Planning History

4.1. Appeal Site

- 4.1.1. PA reference number **19/17** - Provision of 85 No. two storey dwellings comprising 6 No. 2 bed mid terrace units, 36 No. 3 bed mid & end terrace units, 30 No. 3 bed semi-detached units, 10 No. 4 bed semi-detached units and 3 No. 4 bed detached units; Provision of 235 sqm single storey crèche and associated car parking; Completion of existing road network and underground services as previously commenced under planning reference 06/405 (now expired); Provision of entrance

from neighbouring Roselawn estate at location previously designated under planning reference 06/405 (now expired). No decision.

- 4.1.2. PA reference number **06/405** – Permission for additional houses and change of house types, revised road layout and all associated works on previously approved permission ref. 00-1213 as described hereunder: (a) Provision of additional 27 no. two-storey 2 and 4 bedroom houses, in compliance with condition 6 of permission 00-1213; (b) Change of house type from 20 no. 2-storey semi-detached and terraced houses (sites no. 10 to 39 inclusive) to 16 no. two-storey detached 4 bedroom houses; (c) Provision of revised layout to roads 1, 2, 3, 4 and 5 with new public road junction details to Old R698 Road (now a cul-de-sac), access to proposed Fair Green road infrastructure and infilling of link road with 2 no. semi-detached houses, in compliance with conditions 2 and 3 of permission 00-1213.
- 4.1.3. PA reference number **00/1213** - Permission for 143 residential housing estate consisting of 32 no. Detached, 96 no. Semi-detached, 12 no. Terraced, 3 no. Detached dormer bungalows, 212 sqm. Creche, 81sqm neighbourhood shop and 0.937 hectares of parklands, with revised access from the Old R698 Road (now a cul-de-sac), and all associated site works.

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. VSR19-17) 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 Existing Residential in the Callan LAP 2009 and zoned Low Density Residential in the Callan Draft LAP 2018. The site is classified as residential land and has been vacant or idle for the last 12 months. The site was inspected 11 October 2018. The report is accompanied by a site photograph and aerial imagery.
- 5.3. A second report responds to the applicant's submission in relation to the section 7(1) notice and despite an intention to lodge a planning application in January 2019 the

site remains vacant. In addition, the report states that the site does not include lands for the purposes of regeneration.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The landowner 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 states that at the time of the Notice of intent to place the site on the register, the lands were zoned New Residential (20 units per Hectare), but the Draft LAP for Callan identified the lands as Low Density Residential in accordance with the population projections for Callan to 2026. The site has already been partially developed to provide a housing scheme appropriate to the existing density, infrastructure to a cost of €1 million has been installed and three houses are substantially complete. The site will not be viable for low density housing and therefore the site is not suitable for housing.
- There has been ongoing engagement with the Council over the last 12 months concerning the preparation and lodgement of a planning application to complete the development previously permitted under permission P00/1213. Delays encountered included Part V housing allocations and agreement over a Part 8 right of way. A planning application has been lodged, reference number 19/17. The appellant considers that this activity should be taken into account as a use for the site.
- The appellant refers to section 6 of the 2015 Act in relation to regeneration sites and states that the lands are not ruinous, cannot be seen from the public road, existing infrastructure will be re-used and no anti-social behaviour has taken place.
- A brief analysis of the housing market in Callan is presented and the appellant concludes that there is a demand for housing in the area.

The appeal is supported by an extract from the Property Price register for Callan and a copy of the section 7(3) Notice.

6.2. **Planning Authority Response**

The site is designated residential land for the purposes of the 2015 Act and so the requirements of section 6(4) should be met. In this regard, a housing needs assessment for Callan was made in November 2018, the conclusion of which was that there is a housing need. In brief the assessment states Callan is a District Town and targeted for housing growth. House prices in the county are greater than surrounding counties and have increased, so too have rents. In terms of social housing, first preference for the area has risen from 96 in 2014 to 115 in 2018. Houses for sale and rent are below 5% of the total number of houses for Callan.

With regard to section 6(5) of the Act, the site is zoned residential in the current LAP and zoned low density residential in the material amendments to the Draft LAP, currently on display (until 8 March 2019). The lands are suitable for housing and there is nothing affecting the physical condition of the land to preclude housing, as demonstrated by previous permissions on the site.

6.3. **Further Response**

The appellant reiterates delays in the planning process and with other departments of the Council as a hindrance to develop the site. An update is given in relation to the current planning application (19/17), that seeks a low-density housing proposal, under the terms of the new LAP for Callan. The landowner fears a refusal of planning permission because their current proposal is not low density. The degree of doubt concerning the appropriate number of houses for the site, prevents progress in developing the lands and so the site is unsuitable for housing.

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. The majority of the subject site is currently located in an area zoned Low Density Residential in the 2019 Callan LAP and was previously zoned Residential in the 2009 LAP. Section 4.4 of the current plan states that for the purpose of the vacant sites levy all residential zonings will be considered for the purpose of the 2015 Act in accordance with the County Development Plan. In addition, I note that a significant proportion of the site is now located on lands zoned for Industry but which were previously zoned residential. At the time the site was placed on the register, the lands subject to the appeal were entirely situated on residentially zoned lands. For clarity, my assessment takes into account the characteristics of the site in the context of Section 5(1)(a) residential land.

7.3. The appellant's main contention is that the administrative activity of preparing and lodging a planning application renders the site in use. In addition, changes to zoning means that the site is economically unviable at the residential densities required by the LAP and so the site is not suitable for housing.

7.4. **Time Period – 12 Month Duration**

7.4.1. The Board may wish to note recent VSL appeals in Kilkenny that relate to procedural issues and specifically to the relevant time period. The 2015 Act (as amended) requires the Board on appeal to look at the past condition of the site and determine if the site was vacant or idle, section 9 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 11 October 2018.

7.4.3. The relevant time period is a very important factor and one upon which the 2015 Act is quite plain in its interpretation, section 6(2) states as follows:

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.

7.4.4. All other sections pertinent to this appeal repeatedly refer back to the 12 month period. The planning authority should provide a clear chronology to confirm site visits and provide a definitive account of the relevant twelve months. In this instance the planning authority have not adequately accounted for the duration of the twelve month period. From my observations of the site, it is probable that the site has been in the same or similar condition for some time. In this regard the appellant has described the initial construction phases of a permitted housing development, the installation of infrastructure such as roads and drainage and the partial completion of three houses and the foundations of a number of others. It is likely that the site has been inactive or idle for the relevant time period, but it is not clear from information presented by the planning authority that the relevant time period has elapsed and the condition of the site cannot be fully understood without doubt.

7.4.5. Even though it is likely and probable that the lands have been vacant or idle for the relevant time period I cannot be certain. For this reason alone the site should be removed from the register. This does not preclude the planning authority from recommencing the process and implementing the 2015 Act in terms of allowing the relevant 12 month time period to elapse. Despite this procedural error, I assess the appeal in its entirety.

7.5. Vacant or Idle

7.5.1. In terms of section 5(1)(a)(iii)(l) of the 2015 Act, 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 originally developed for housing. Infrastructure was installed, three houses almost completed and the foundations of others laid. The appellant admits that the site was closed up. The appellant contends however, that in the recent past the administrative activities associated with preparing and lodging a planning application, agreeing a right of way and Part V requirements should all be

considered as an ongoing use for the site. In addition, the appellant is frustrated at the changing residential density of zoned lands associated with the site that have caused the landowner to doubt what would be an appropriate quantum of development.

7.5.2. I note the appellant's comments in referring to the planning process as an active use for the site and also the frustration at the timing and shifting residential density requirements for the lands concerned. Firstly, I am satisfied that for the relevant period the lands were zoned residential and could be considered for inclusion on the register. Secondly, the 2015 Act does not indicate that administrative activity in relation to a site, such as the preparation of a planning application or obtaining planning permission should be considered to deem a site not vacant or idle. Though the appellant may be working towards a conclusion for the site in question, 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.

7.6. Housing need and suitability

7.6.1. The owner has appealed the suitability of the site for housing. This is based upon the premise that the recently zoned lands for low density housing undermines the economic viability of the site. No substantive matters are raised in relation to the need for housing in Callan by the appellant. 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 were previous planning permissions on the site, now withered.

7.6.2. The appellant reinforces their economic viability argument by suggesting that their current planning application to finish out the housing estate will be refused permission because it falls foul of lower residential densities envisaged for the area. This, it is claimed by the appellant, prevents the lands coming forward for development even though permission had been previously permitted. This may be so, but the Board is limited to the state of affairs during the relevant time period of twelve months. In any case, the economic viability of a site is not a consideration in the assessment of a vacant site with reference to sections 6(4) and 6(5) of the 2015

Act. I am satisfied that the site is suitable for housing and that there is a need for housing in the area.

- 7.7. 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 not satisfied that this is the case. As I have outlined above, the use of the site cannot be determined definitively, and I have concerns that the twelve month time period had not been allowed to elapse and the entry should be removed from the register for procedural reasons.

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 cancel the Notice stating that the site at Bolton Green, Callan, County 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 removed.

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 recorded date of site inspection, (11 October 2018) provided by the Planning Authority in its submitted documentation, and
 - (e) the absence of sufficient evidence to support the contention of the planning authority that the site was vacant and idle for the period of 12 months preceding the date of placing the site on the register.

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.

Stephen Rhys Thomas
Senior Planning Inspector

04 September 2019