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Bord  
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## Inspector's Report ABP-303560-19

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<b>Type of Appeal</b>	Section 9 Appeal against section 7(3) Notice.
<b>Location</b>	Lands at Love Lane, Castlecomer, County Kilkenny.
<b>Planning Authority</b>	Kilkenny County Council.
<b>Planning Authority VSL Reg. Ref.</b>	VSR19-20.
<b>Site Owner</b>	Respond Housing Association.
<b>Date of Site Visit</b>	19 April 2019.
<b>Inspector</b>	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 Love Lane, Castlecomer, 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 a stated 1.4 Hectares in area, broadly rectangular in shape and located out of the centre of Castlecomer in County Kilkenny. The site is situated off Love Lane and to the rear of houses. The northern boundary of the site falls just short of a tributary to the Dinin River. The boundaries of the site align with stock fencing that divides this agricultural farmland. The site is laid out as a large agricultural field, grazed by cattle, on the day of the site visit, livestock were in adjacent fields. The field slopes gently downwards from north to south and the gradient increases as it nears the river valley.

## 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 **Castlecomer LAP 2018** is the operative development plan. The site is located on lands that are subject to zoning New Residential - To allow for new residential development and other services incidental to residential development. While housing is the primary use in this zone, childcare facilities and recreation will also be considered.

Section 4.4 Vacant Sites Levy of the LAP sets out the following:

The Urban Regeneration and Housing Act 2015 introduced a Vacant Sites Levy as a site activation measure to ensure that vacant or underutilised land in urban areas is

brought into beneficial use. This Plan will promote, encourage and facilitate the appropriate development of sites and areas in need of development and renewal 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

For the purpose of the vacant sites levy the following zoning will be considered for the purpose of the act in accordance with the County Development Plan:

- General business, mixed use, industrial and community facilities for regeneration purposes.
- All residential zonings for residential purposes.

## 4.0 Planning History

### 4.1. Appeal Site

- 4.1.1. **PL10B.131214.** Construction of 28 no. houses, communal building including and pre-school facilities. January 2004.
- 4.1.2. **07/1247.** Revisions to PL10B.131214, additional units and car parking spaces. February 2008.

## 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. VSR19-20) 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 New Residential in the Castlecomer LAP 2018. The site is classified as residential land and has been vacant or idle for the last 12 months. The land is in use for agricultural purposes. The lands were zoned residential in the 2002 Development Plan and Respond were the owners in 2007. The site was inspected 19 October 2018. The report is accompanied by a site photograph and aerial imagery. In addition, the landowners initial submission is reproduced and a brief assessment of its content provided.

## 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 as the lands are zoned Phase 2, they are not currently available for residential development. The appellant refers to the Kilkenny County Development Plan 2014-2020 and its core strategy that outlines the potential for 52 households for Castlecomer. Phase 1 lands remain undeveloped and until they are developed, section 12.12.8 of the County Development Plan restricts unsustainable leapfrogging.
- The Castlecomer LAP 2018 zones an additional 10.7 Hectares of land for residential purposes and highlights the appeal site as suitable for social housing. The County Development Plan was not varied to take account of the revised position set out for Castlecomer in the LAP and is therefore contrary to the requirements of the Planning and Development Act 2000, section 18(4)(b). The LAP should therefore have no effect.
- The site cannot be serviced, road infrastructure is deficient, contrary to the requirements of section 6(5)(b) of the 2015 Act.

- According to the LAP, the site is available for residential development, but this has been so for less than 12 months, as required by section 5(1) of the 2015 Act.
- The wording of the section 7(1) Notice was incorrect and no reasons for placing the site on the register were given.
- The Register did not provide a description or a map of the site, and market value of the site has not been advertised. No detailed assessment of the site was provided. Thus, the service of the section 7(3) Notice was flawed.

The appeal is supported by a copy of the section 7(1) and 7(3) Notices, maps and advice to landowners concerning the VSR produced by Kilkenny County Council.

## 6.2. **Planning Authority Response**

There is a need for housing in Castlecomer and a study was carried out that assessed all the criteria set out by section 6(4) of the 2015 Act. Castlecomer 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 dropped. Houses for sale and rent are below 5% of the total number of houses for Castlecomer.

The Draft Castlecomer LAP (October 2017) indicated that the site was located on lands zoned New Residential, this did not change when the plan was published in April 2018. The PA consider that the site had been zoned for residential purposes for at least 12 months. The submission by the landowner, refers to Phase 2 lands, a feature of the 2009 LAP introduced by Amendment 1 and replaced by the 2018 LAP.

The site can be serviced as evidenced by previous permissions on the site.

In terms of procedural issues, the notices were served as required and material was publicly available, the site will be valued as soon as may be after the site is entered onto the register.

## 6.3. **Further Response**

The appellant reiterates the previous grounds of appeal and builds on the points raised by the planning authority. Emphasis is placed on the inconsistencies between

the County Development Plan and the 2018 LAP and therefore the subject lands are still exposed to the Phasing requirements of the County Plan. In addition, the previous permission on the site could not be extended because the 2009 LAP and CDP 2014-2020 introduced the Phasing requirement and therefore put a stop to development of the site.

## **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 subject site is located in an area zoned New Residential - To allow for new residential development and other services incidental to residential development. While housing is the primary use in this zone, childcare facilities and recreation will also be considered, as detailed in the current Castlecomer LAP. Section 4.4 of the plan states that for the purpose of the vacant sites levy all residential zonings will be considered for the purpose of the act in accordance with the County Development Plan. My assessment takes into account the characteristics of the site in the context of Section 5(1)(a) residential land.
- 7.3. The landowner states problems with procedures employed by the planning authority in serving the notice and making material available to the public. The principle issue is that the lands were prevented from coming forward for development because the County Development Plan zoned the lands Phase 2. In addition, the 2018 LAP is out of step with the core strategy of the County Development Plan and therefore has no standing. The lands cannot be serviced and were prevented from being developed due to zoning restrictions, it is less than 12 months since the 2018 LAP facilitated development on the site. The planning authority confirm their assertion that the site is suitable for housing and that there is a need for housing. The 2018 LAP process

zoned the lands for residential purposes for a period in excess of 12 months if the draft plan is taken into account, Phase 2 restrictions did not apply.

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

- 7.4.1. The Board may wish to note recent VSL appeal decisions in County 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 19 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 chronological record to confirm site visits and provide a definitive assessment of the duration of twelve months, i.e. when the site was first visited and when most recently visited in relation to placement on the register. In this instance the planning authority have not fully accounted for the duration of the twelve month period. From my observations of the site and the

records of the planning authority, it is probable that the site has been in the same or similar condition for some time. In this regard it is most likely that the lands have been and continue to be in use for agricultural purposes, 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 understood without doubt.

- 7.4.5. Even though it is likely and probable that the lands have been in use for agricultural purposes 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 shall continue to assess the appeal in its entirety.

## 7.5. Vacant or Idle

- 7.5.1. In terms of part section 5(1)(a)(iii), that the site, or the majority of the site, is vacant or idle. I note that the site is currently in use for agricultural purposes. No actual use for the site has been advanced by the appellant.

- 7.5.2. The planning authority information on the file states that the lands in question are unregistered, do not have a Land Registry Folio number and a passing reference to Respond as the owners in 2007. The landowner sheds no light on when they became the owner either and so I am uncertain about the actual length of time that the lands have been in the same ownership. This is important because section 63 of the Planning and Development (Amendment) Act 2018, brought clarification to ongoing uses, ownership and what should be considered for the purposes of determining a vacant site, as follows:

*(iii) the site, or the majority of the site is —*

*(I) vacant or idle, or*

*(II) being used for a purpose that does not consist solely or primarily of the provision of housing or the development of the site for the purpose of such provision, provided that the most recent purchase of the site occurred —*

*(A) after it became residential land, and*

*(B) before, on or after the commencement of section 63 of the Planning and Development (Amendment) Act 2018.*



7.5.3. In this case, it is highly likely that the lands have been in use for agricultural purposes for some time and continue to be so employed. If ownership had changed after the lands had become zoned for residential purposes, then this would have consequences for the assessment of the site. If Respond were the landowners prior to the lands being zoned residential in 2002, the ongoing use of the site for farming would be a consideration to remove the site from the register. Because the date of ownership is in doubt, I cannot be certain the site is a vacant site in accordance with section 5(1)(a)(iii)(II) of the 2015 Act.

## 7.6. **Housing need and suitability**

7.6.1. The owner has appealed the need for housing in the area and that the site is not 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 were two previous planning permissions on the site, now withered.

7.6.2. The appellant makes a great deal about the residential land use zoning for the site and that in the County Development Plan it was designated Phase 2, only to be developed after more suitable Phase 1 lands were built out. This, it is claimed by the appellant, prevented the lands coming forward for development even though permission had been previously permitted. The case is made that an extension of duration of the permitted development would not have been granted because of the shifting phasing constraints placed on the site by the County Development Plan. This may be so, but I see no evidence that a permission to extend the duration of the previous permission had been applied for and refused. If this was the case I might be convinced that the lands were indeed locked out for development by a phasing objective of the planning authority. This is not the case and the lands were zoned for residential purposes all along. I am mostly satisfied that the requirements of section 6(4) of the 2015 Act have been reached and there is a need for housing in the area. Although, I do note that the planning authority reference a drop in the number of qualified people that cited Castlecomer as their first preference for social housing. However, in my mind all other aspects of section 6(4) are met in terms of the lack of availability of housing for sale or rent and that Castlecomer has been targeted for growth by the Council in its Development Plan core strategy.

7.6.3. Finally, with reference to section 6(5) of the 2015 Act, I note that the site had the benefit of a previous permission for housing units and no infrastructural or site constraints were identified. 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 and timing of ownership is unclear 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 Love Lane, Castlecomer, 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, (19 October 2018) provided by the Planning Authority in its submitted documentation,
- (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.

- (f) The absence of sufficient evidence to determine if the site was being used for a purpose that does not consist solely or primarily of the provision of housing or the development of the site for the purpose of such provision, or that the most recent purchase of the site occurred before it became residential land, and before, on or after the commencement of section 63 of the Planning and Development (Amendment) Act, 2018,

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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Stephen Rhys Thomas  
Senior Planning Inspector

26 July 2019