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Bord  
Pleanála

## Inspector's Report ABP-303561-19

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| <b>Type of Appeal</b>                   | Section 9 Appeal against section 7(3) Notice. |
| <b>Location</b>                         | Lands at Middleknock, Kilkenny.               |
| <b>Planning Authority</b>               | Kilkenny County Council.                      |
| <b>Planning Authority VSL Reg. Ref.</b> | VSR19-10.                                     |
| <b>Site Owner</b>                       | Patrick and Ann O'Brien.                      |
| <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 Middleknock, 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 Dublin Road on the eastern outskirts of Kilkenny City. The site is close to the roundabout junction associated with the intersection of the R71 (Dublin Road) and N10. Dwelling houses are located to the west of the site and the south. Agricultural fields are located to the east and south of the site. The site interior is broadly level, overgrown with semi-mature trees and some areas of grass. The boundary to the public road is a low wall, in good repair, overrun with cotoneaster hedging.

## 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 objective Existing Residential – ‘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. Appeal Site

- 4.1.1. **17151.** Refuse permission 8 two bed apartments in 4 blocks 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. VSR19-10) 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 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 is located in an area in need of housing, the site is suitable for housing, the site is not in agricultural use and is vacant. The site is considered serviced for the

purposes of the Act . The site was inspected 09 October 2018. The report is accompanied by photographs and site location map.

## **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 owner is in the process of bringing forward a new planning scheme for the site. Discussions have been ongoing to sort out issues raised in the previous application (17151) and a new application will be lodged soon. Construction will follow shortly afterwards, if permission is granted.

### **6.2. Planning Authority Response**

6.2.1. There is a need for housing in Kilkenny, an assessment has been included that outlines the housing strategy of the county, that has identified a total of 3,570 new households will be required. House prices have increased over the last year by over 7% and the average rent is higher than surrounding counties. The social housing requirement has decreased. The number of houses for sale or rent is less than 5% of the total housing stock in Kilkenny.

6.2.2. The site is zoned residential, served by public infrastructure and nothing affects the physical condition of the land to preclude development. The previous permission was refused on design grounds and a failure to address transport/traffic issues.

### **6.3. Further Response**

6.3.1. The appellant notes the contents of the planning authority letter and is satisfied that the site is suitable for housing development. With reference to a failure to address further information requests as part of the previous planning application, the owner has furnished a layout and an engineering drawing that they indicate did meet the concerns of the planning authority. The owner concludes by stating an intention to progress a planning application soon.

## 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 Existing Residential 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, 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 owner has not appealed the condition of the site in terms of vacant or idle. In addition, the owner has accepted that the lands are suitable for housing and that there is a need for housing in the area. The owner's main contention is that issues that hampered the previous planning application are in the process of being addressed and a new planning application will be lodged, construction to follow soon after. The planning authority have submitted material to underline that the site complies with the requirements of section 5(1)(a) of the Act, specifically the criteria outlined by section 6(4) and (5), housing need and site suitability.
- 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 09 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 assessment of the duration of 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 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, I note the overgrown state of the site and the lack of any development on the lands. 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. For completeness, I have included an assessment of the other matters that relate to the site and the vacant site register.

## 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 overgrown with vegetation and there is no development on site or signs of recent use. No actual use for the site has been advanced by the appellant other than the claim that the process of seeking planning permission should be seen as a use. I note the owner's comments in referring to the planning process and an aspiration to address the faults of a previous planning application with a more acceptable proposal. 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 owner may be working towards an improved housing scheme, I do not consider that the activities listed by the owner 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 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 was a previous planning application refused permission on the site after a request for further information. The planning authority have outlined that the reasons for refusal did not relate to the suitability of the site for housing, but rather technical matters that could have been addressed by the submission of further information. The owner is also satisfied that there is nothing to prevent the development of the site for housing and in this regard, it is envisaged that a planning application will follow shortly. Furthermore, I note the construction of dwellings recently in the vicinity.

7.6.2. 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. However, as I have outlined above, I have concerns that the twelve month time period has not elapsed 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 Lands at Middleknock, 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, (09 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.

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

05 July 2019