



An
Bord
Pleanála

Inspector's Report ABP-304095-19

Type of Appeal	Section 9 Appeal against entry of land on the Register of Vacant Sites
Location	Newtownmountkennedy, Co Wicklow
Planning Authority	Wicklow County Council.
Planning Authority VSL Reg. Ref.	VS/NTMK/18.
Appellant	Oisin Development Co. Ltd
Planning Authority Decision	Place on Register.
Date of Site Visit	22 nd August 2019.
Inspector	Stephen J. O'Sullivan

1.0 Introduction

- 1.1. This appeal is against the entry of a site at Newtownmountkennedy, Co. Wicklow on to the Vacant Sites Register (VSR) by the council in accordance with the provisions of the Urban Regeneration and Housing (URH) Act 2015 (as amended).

2.0 Site Location and Description

- 2.1. The site is in the town centre of Newtownmountkennedy towards the southern end of its Main Street. It has a stated area of 0.22ha. It has c20m of frontage onto the Main Street between other buildings that directly abut the footpath. The building to the south is in mixed use and 2 and 3 storeys high. A 2 storey mixed use building lies its north. The site includes land behind those buildings. Its western boundary adjoins the back gardens of a housing estate that is at a level c6m above Main Street. There is an embankment along the western side of the site. The southern boundary of the site includes frontage of c23m onto a road off Main Street.

3.0 Statutory Context

3.1. Urban Regeneration and Housing Act 2015, as amended

- 3.1.1. Section 3 of the site states that “regeneration land” means land identified by a planning authority in its development plan or local area plan, after the coming into operation of section 28 , in accordance with section 10(2)(h) of the Act of 2000 with the objective of development and renewal of areas in need of regeneration, and includes any structures on such land.
- 3.1.1. Section 5(1)(b) of the act provides criteria to define a vacant site for regeneration land which refers to
- Whether the site or a majority of it is vacant or idle, and
 - Whether the site being vacant or idle has adverse effects on existing amenities or reduces the amenity provided by public infrastructure and facilities within meaning of section 48 of the planning act in the area in which the site is situated or has adverse effects on the character of the area

- 3.1.2. Section 6(2) states that 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.
- 3.1.3. Section 6(6) of the act provides that the council 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.
- 3.1.4. Section 7 of the act requires the planning authority to give notice to the owner of a site of its intention to enter the site on the register and to consider submissions from the owner. If the site is entered on the register then notice of the entry must be given to the owner. Section 9 allows the owner of the site to appeal its entry to the board within 28 days of that notice.

3.2. Planning Policy

- 3.2.1. Chapter 4 of the **Wicklow County Development Plan 2016-2022** refers to Urban Regeneration and Housing in and specifically at Policy HD19 where it states:
- In many settlements in the County, there are sites and areas in need of development and renewal, in order to prevent:*
- a. adverse effects on existing amenities in such areas, in particular as a result of the ruinous or neglected condition of any land,*
 - b. urban blight and decay,*

c. anti-social behaviour, or

d. a shortage of habitable houses or of land suitable for residential use or a mixture of residential and other uses

It is an objective of this plan to encourage and facilitate the appropriate development of such sites /lands and all available tools and mechanisms, including the Vacant Site levy, may be utilised to stimulate such development.

In this regard, it is considered that all lands zoned 'Town Centre' in this plan (this refers to Level 5 settlements) as well as the following zones in larger towns (with standalone plans) may include sites that are in need of renewal and regeneration, and these areas will be examined in detail to determine if there are sites where the Vacant Site Levy should be applied.

The lands zoned TC in the Newtownmountkennedy are specifically included the regeneration lands identified under policy HD19

- 3.2.2. The site is zoned for town centre activities under objective TC o the **Newtownmountkennedy Local Area Plan 2008-2018.**

4.0 Planning History

- 4.1. Reg. Ref 07/140 – the planning authority granted permission in August 2008 for the demolition of betting shop and construction of 3 new buildings accommodating shops, offices and 10 apartments. In 2013 the planning authority extended period of this permission was extended to 8th November 2018.
- 4.2. ABP-300552-18 – On 6th June 2018 the board cancelled an entry in the register of an adjacent site to the north of the current site on the other side of the road after an appeal under section 9 of the act. The board's order stated that the condition of the site, which was not considered to be overgrown or neglected, did not display any visible evidence of anti-social behaviour and, therefore, it was considered that it does not have adverse effects on the existing amenities or character of the area.

5.0 Planning Authority Decision

5.1. Planning Authority Notices

A report from the council planner dated 9th January 2018 stated that the site was vacant on 12th December 2018 and had been so for a period of 12 months. It stated that the site was not maintained and leaves a gap in the streetscape along Main Street. The site is on regeneration land and the tests at section 5(1)(b) of the act were applied. The report states that the site being vacant or idle has adverse effects on existing amenities. Its neglected condition reduces the amenities provided by existing public infrastructure in the area causing adverse effects on the character of the area. The lack of buildings breaks the building line and disrupts the overall appearance and completeness at a prominent location on the Main Street of Newtownmountkennedy. There is evidence of anti-social behaviour in the form of littering and dumping. It was recommended that the site be entered on the register.

The council issued a notice to the appellant under section 7(1) of the 2015 act on 7th February 2019 (amending a previous notice issued on 15th January 2019) stating that it considered the site to be vacant for the purposes of the act for the following reasons –

- It had been vacant or idle for a period of 12 months
- The site being vacant or idle has adverse effects on existing amenities or reduces the amenity provided by public infrastructure and facilities within meaning of section 48 of the planning act in the area in which the site is situated or has adverse effects on the character of the area

and that the council intended enter the site in the Vacant Sites Register.

The appellant made a submission to the planning authority in response to the notice. It states that the site was cleared for development in the 1970s. It was purchased by the appellant company in 1985. There has been encroachment onto the site owned by the appellant. While permissions have been granted on the site the state of the economy and the failure of the council to improve the village have prevented development. The erection of a bus shelter in front of the site failed to take account of the development on the site authorised under 07/140. The site has been

maintained in good condition. Substantial clearance works took place in 2010 and it is checked weekly. The development costs of the previously authorised scheme on the site exceed its value so the residual value of the site is less than zero. Any construction on the site will be particularly costly due to the retention of ground that would be required which would impose a huge capital cost on a small site. The circular issued by the minister stated that the viability of development on sites should be considered and only sites capable of being developed should be identified as being vacant.

In response the planning authority requested the appellant to clarify the extent of its ownership of the site. The appellant submitted a map outlining the land it owns in red.

The council planner submitted a further report dated 8th March 2019. It noted the boundary of the site and the claim of ownership by the appellant. It maintained the position that the vacancy of the site undermined the character of the Main Street. Section 11 notices are issued in relation to sites that are already on the register rather than for new entries. In relation to viability, it was noted that planning permission had previously been granted for the development of the site and other development was underway in the town, so the development of the site is possible. The site was not placed on the Derelict Sites Register. There remains a significant amount of litter on the site and some rubble. It was recommended that the site be placed on the register.

The planning authority entered the site on the register on 21st March 2019 and issued a notice to the appellant to that effect under section 7(3) of the act.

6.0 The Appeal

6.1. Grounds of Appeal

The site does not fulfil the criteria for a vacant site in a regeneration area set out in section 5(b)(ii) of the act, as elaborated in section 6(6). Its vacancy does not have adverse effects on the existing amenities, reduce the amenities provided by existing public infrastructure and facilities or have adverse effects of the area. The site is not in a ruinous or neglected condition and is properly maintained by the appellant. Anti-social behaviour does not occur there. It cannot reasonably be said that the vacancy

of the site has caused a reduction in the amount of housing in the area having regard to the development that has occurred elsewhere in the town centre. The appeal was accompanied by the owner's submission in response to the planning authority's notice under section 7(1).

6.2. Planning Authority Response

The response from the council states that it is satisfied that the site meets the criteria at section 5(1)(b) of the act. The site is at a prominent location in the town centre on the main route in and out of the town. Its vacancy breaks the building line and pattern disrupting the overall appearance of the streetscape and the poor condition of the site seriously degrades the overall appearance amenity and vitality of the area. Historical maps show the site had structures that had been removed by the 1970s. Additional excavations to the embankments at the rear of the site seem to have occurred in the 1990s-2000s. They have left the lands in a ruinous and visually poor condition with open ground exposed from the streets on two sides. The sides and backs of adjoining buildings are also exposed the public domain as a result. The exposed ground give the site a ruinous unkempt appearance. It may have been used to store building materials. So the site is in a neglected condition. It is a vacant site and should be entered on the register. Photos were included with the response.

6.3. Further Response

The appellant's response to the council's response stated the site is not in a ruinous or neglected condition and has been well maintained with the grass regularly cut and litter cleared from the site. There is no reason to conclude anti-social behaviour occurs there and there is no evidence that there has been a reduction in the number of houses or people living in the area. The condition of the site is now better than it was in the 1970s-1980s as illustrated by submitted photographs. The embankments behind the county council estate are partly in the registered ownership of the council. The historical structure may have been a dance hall but it was demolished before the 1970s. There was never any structure on the appellant's site and it is a car park on old maps. The council's photos show various items and material on the site for which the appellant is not responsible. The site is not in a neglected condition and is frequently maintained. There was never a building on the site and the condition of the site does not disrupt the overall appearance and completeness of Main Street.

The site does not meet the criteria at sections 5(1)(b) and 6(6) of the act and should not be on the register.

7.0 **Assessment**

- 7.1. The site is zoned town centre under the local area plan and so by virtue of Policy HD19 of the development plan consists of regeneration land under section 3 of the act. It is currently vacant or idle and was so for at least 12 months before its entry on the register. It there meet the criterion set out at section 5(1)(b)(i) of the act.
- 7.2. The question at issue in this case is whether the site meets the criteria set out at sections 5(1)(b)(ii) and 6(6) of the act. Notwithstanding its vacancy the site has been fenced and maintained, as stated by the appellant. It is not in a ruinous condition nor does it appear that anti-social behaviour has occurred there to any significant extent. Nonetheless I would agree with the planning authority that its vacancy injures the amenities of the area because it disrupts what would otherwise be a reasonably continuous streetscape along this side of the Main Street which is an important element in the architectural character of the town centre. The vacancy of this plot along the Main Street which lies between other buildings that do properly address the street means that the site is in a neglected condition. In this regard it can be distinguished from the nearby site that the board removed from the register under ABP-300552-18. The site has been vacant for decades. However it is evident from the historic form and layout of the town's Main Street that it would have included street frontage across the site. The vacancy of the site reduces the number of habitable houses and the number of people living in the regeneration area defined by the town centre zoning compared to the situation that would prevail if the site were not vacant. It also reduces the amenity that would be provided by the public infrastructure and facilities in the area and has adverse effects on its character. These circumstances are not affected by other development around the town outside the regeneration area. The slope at the rear of the site would present some challenges for its redevelopment and the location of the bus stop directly in front of it is unfortunate. However they would not be likely to render the redevelopment of the site unviable, either in a manner similar to that which was previously authorised there or with a smaller scheme that completed the streetscape across its frontage onto Main Street. The boundaries of the site are similar to the boundaries of the land to

which the appellant claimed ownership which the application for permission was made under Reg. Ref. 07/140. The board is therefore advised that the circumstances of the site meet the criteria set out at sections 5(1)(b)(ii) and 6(6) of the act and so it a vacant site

8.0 Recommendation

8.1. I recommend that the board determine in accordance with section 9(5) of the Urban Regeneration and Housing Act 2015, as amended, that the site at Main Street, Newtownmountkennedy, Co. Wicklow, Ref No. VS/NTMK/18, is a vacant site and was for the period of 12 months before its entry on the register of vacant sites and that its entry on the register be confirmed.

9.0 Reasons and Considerations

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 and the subsequent submissions from the Planning Authority and the Appellant,
- (c) The report of the Planning Inspector,
- (d) Policy HD19 of the Wicklow County Development Plan 2016-2022 and the provisions of the Local Area Plan for Newtownmountkennedy 2008-2018 in particular its zoning of the site for town centre activities, and
- (e) The disruption that the vacancy of the site causes to the streetscape along the Main Street of the town and the resulting injury to the character and amenities of the area,

the Board concludes that the site was vacant and idle for a period of 12 months before its entry on the register and that it being vacant or idle has adverse effects on existing amenities and reduces the amenity provided by public infrastructure and facilities and has adverse effects on the character of the area. Therefore the board is satisfied that the site was a vacant site under section 5(1)(b) of the Urban

Regeneration and Housing Act 2015, as amended, in the period of 12 months before the entry of the site onto the register

Stephen J. O'Sullivan
Planning Inspector

20th December 2019