



An
Bord
Pleanála

Inspector's Report 306516-20

Type of Appeal	Section 9 Appeal against Section 7(3) Notice
Location	Middleknock, Kilkenny
Planning Authority	Kilkenny County Council
Planning Authority VSL Reg. Ref.	VSR 20-5
Site Owner	Patrick and Ann O' Brien
Planning Authority Decision	Place on Register
Date of Site Visit	17 th April 2020
Inspector	Erika Casey

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 referred to as Middleknock, Kilkenny onto the Vacant Sites Register (VSR) in accordance with the provisions of Section 6(2) of the Urban Regeneration and Housing Act 2015.
- 1.2. The appeal site registered under VSL reference VSR 20-5, has two registered owners: Patrick and Ann O' Brien.

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.

3.0 Statutory Context

3.1. URH ACT

- 3.1.1. The Notice issued under Section 7(3) of the Act states that the PA is of the opinion that the site referenced is a vacant site. The Notice is dated 31st December 2019. The Planning Report accompanying the Section 7(1) Notices stated that the site consists of residential land.
- 3.1.2. Section 5(1)(a) of the Act states that a site is a vacant site if, in the case of a site consisting of residential land:-
 - (i) the site is situated in an area in which there is a need for housing,
 - (ii) the site is suitable for housing, and
 - (iii) the site, or the majority of the site, is vacant or idle.
- 3.1.3. It is noted that Section 5(1)(a)(iii) has been amended by Section 63 of the Planning and Development (Amendment) Act 2018 which commenced upon coming into effect

of the Act (19 July 2018). This section of the Act amends Section 5 of the Act of 2015 by substituting Section 5(1)(a)(iii) for the following:

“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”.

3.1.4 The Act defines ‘residential’ land in Section 3 as follows:

“residential land” means land included by a planning authority in its development plan or local area plan in accordance with section 10(2) of the Act of 2000 with the objective of zoning for use solely or primarily for residential purposes, and includes any structures on such land.”

3.2. **Development Plan Policy**

Kilkenny City and Environs Development Plan 2014-2020

3.2.1 The Kilkenny City and Environs Development Plan 2014-2020 is the operative development plan for the area. The site is located on lands that are subject to zoning ‘Existing Residential’ with the objective: *“To protect, provide and improve residential amenities.”*

3.2.2 With regard to the vacant site levy, the plan includes:

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.

3.2.3 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

Application Reference 20/9

4.1 Permission sought for a development comprising of 8 no. dwelling houses. Request for Further Information issued. Decision pending.

Appeal Reference 303561-19

4.2 A previous appeal against entry onto the vacant site register in relation to the subject site was cancelled by the Board on the 6th of August 2019. The Board cancelled the entry due to a procedural error in that there was an absence of sufficient evidence to support the contention that the site was vacant or idle for the period of 12 months preceding the date of placing the site on the register.

4.3 Key points from the assessment carried out by the Inspector included:

- Noted that the site was overgrown with vegetation and that there was no development on site or signs of recent use. No actual use for the site had been advanced by the appellant other than the claim that the process of seeking planning permission should be seen as a use.
- Was satisfied that the information presented by the Planning Authority in relation to sections 6(4) and 6(5) of the 2015 Act was evidence based and a fair

assessment of the need for and suitability of the site for housing. Was also mindful of the planning status of the site; its zoning for residential uses and that there was a previous planning application refused permission on the site after a request for further information. The Planning Authority 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.

Application Reference 17151

4.4 Permission refused in February 2018 for a development comprising 8 two bed apartments in 4 blocks and all associated site works.

5.0 Planning Authority Decision

5.1. Planning Authority Reports

5.1.1 A Vacant Site Report (19.11.2019) was prepared for the site outlining the dates of the visits to the site, zoning and the type of site for the purposes of the Act which in this case is Residential. The following key points are noted:

- Site visits were undertaken on the 9th of October 2018 and the 7th of November 2019. Photographs accompany the report.
- Site is situated in an area in which there is a need for housing.
- The site is suitable for the provision of housing.
- The site or the majority of the site is vacant of idle.

5.1.2 A further Planning Report was prepared (31.12.2019). This noted:

- Until the site is actually brought into active use, it remains a vacant site under the legislation. The activities listed by the owner do not comprise either site works or a permitted and ongoing use of the lands during the relevant period.
- It recommended that the lands should be included on the Vacant Sites Register and that a section 7(3) Notice be issued.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1 An appeal was received from Patrick and Ann O' Brien on the 24th of January 2020 which can be summarised as follows:

- Believe that the entry of the site onto the VSR is premature as are currently trying to achieve planning permission.
- It has been their intention to develop the site since 2016. Permission was refused for a development under 17/151.
- In April 2019, a pre planning meeting was held. The issue of access was discussed. At a subsequent meeting, a design was finalised for inclusion in a new planning application.
- Irish Water also sought clarification of the location of a water main on adjoining land and requested that trial holes be dug and pipe be surveyed. These works have been carried out.
- A Planning Application under application reference 20/09 has been lodged and the decision is pending.

6.2. Planning Authority Response

- The site is zoned 'Existing Residential' in the Kilkenny City and Environs Development Plan 2014. The site has been zoned for Residential since 1994. The site is served by the public infrastructure and facilities necessary to enable housing to be provided and serviced.
- Permission was refused under Planning Ref. 17/151 for two reasons relating to design issues/effect on the residential and visual amenity of the area and the applicant's failure to address a further information request relating to the carrying out of Traffic Impact Assessment.
- The current context of a live application on the site is not a consideration under the terms of the Urban Regeneration and Housing Act, 2015.

7.0 Assessment

7.1. Introduction

7.1.1. This notice has been issued under the provisions of Section 5(1)(a) of the Act which relates to 'residential' lands.

7.1.2. Section 5(1)(a) of the Act states that a site is a vacant site if, in the case of a site consisting of residential land:-

- (i) the site is situated in an area in which there is a need for housing,
- (ii) the site is suitable for housing, and
- (iii) the site, or the majority of the site, is vacant or idle.

7.1.3. As I note above, Section 5(1)(a)(iii) has been amended by Section 63 of the Planning and Development (Amendment) Act 2018 which commenced upon coming into effect of the Act (19 July 2018). This section of the Act amends Section 5 of the Act of 2015 by substituting Section 5(1)(a)(iii) for the following:

“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”.

7.1.4 Section 6 (4) determines whether or not there was a need for housing in an area within the Planning Authority's function area by reference to:

(a) the housing strategy and the core strategy of the Planning Authority

(b) house prices and the cost of renting in the area

(c) the number of households qualified for social housing support in accordance with section 20 of the Housing (Miscellaneous Provisions) Act 2009 that have specified

the area as an area of choice for the receipt of such support and any changes to that number since the adoption of the planning authority's development plan and

(d) whether the number of habitable houses available for purchase or rent was less than 5% of the total number of houses in the area.

7.1.5 Section 6(5) of the Act determines the suitability of a site for housing having regard to:

(a) the core strategy

(b) whether the site was served by the public infrastructure and facilities (within the meaning of section 48 of the Act 2000) necessary to enable housing to be provided and serviced, and

(c) whether there was anything affecting the physical condition of the land comprising the site which might affect the provision of housing.

7.1.6 I will consider each of these criteria in turn. I will then address the appellant's contention that the site should not be entered onto the register as there is a live planning application for its development.

The Need for Housing

7.1.7 Section 6(4) of the act sets out the criteria to be considered when determining if there is a need for housing in the area. I note in this instance, there is a paucity of information on the file to support the contention of the Planning Authority that the site is located in an area of need of housing. Notwithstanding this however, I acknowledge that this matter was given consideration in the previous Inspector's report relating to the vacant site levy appeal on the subject site under ABP 303561-19. No concern was raised by the Board regarding this criteria. The Inspector's report stated:

"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."

The appellant has not contested that there is a need for housing in the area.

Suitable for Housing

7.1.8 Under the Core Strategy, the housing allocation for Kilkenny City is 2,977 persons by 2020. The site is zoned for residential use and has been zoned for such use since 1994. The site is located in an urban area and is served by existing infrastructure. There is a current live application for the development of the site for housing. I am satisfied that the site is suitable for housing and that there is nothing affecting the physical condition of the land comprising the site which might affect the provision of housing.

Vacant or Idle

7.1.9 In terms of part section 5(1)(a)(iii), that the site, or the majority of the site, is vacant or idle, at the time of my site visit, I noted that the site is overgrown with vegetation and there is no development on site or signs of recent use. The lands are clearly vacant and idle.

Other Matters

7.1.10 The appellants principal ground of appeal is that an application for planning permission has lodged on the subject site and a decision is pending. In the matter of a current planning application or indeed an extant planning permission for the site, the Act is clear; the test for inclusion is the past condition of the site from the date of entry on the Register. I refer to Circular Letter PL7/2016, Appendix 3, that states: *“where a vacant site has an extant planning permission associated with it, this should not be a consideration in determining whether to apply the levy.”*

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 (VSR 20-5) as it was a vacant site for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 31st of December 2019 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) The provisions of the Kilkenny City and Environs Development Plan 2014-2020;
- (e) That the site is suitable for the provision of housing by reference to the provision of public infrastructure and facilities (within the meaning of section 48 of the Planning and Development Act, 2000, as amended) necessary to enable housing to be provided and serviced;
- (d) That the majority of the site is vacant or idle, there is a need for housing in the area, the site is suitable for the provision of housing, and that insufficient reason is put forward to cancel entry on the Vacant Sites Register;

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

Erika Casey
Senior Planning Inspector

17th April 2020