



An
Bord
Pleanála

Inspector's Report
306517-20

Type of Appeal	Section 9 Appeal against Section 7(3) Notice
Location	John's Green, Kilkenny
Planning Authority	Kilkenny County Council
Planning Authority VSL Reg. Ref.	VSR 20-12
Site Owner	City Cinema Limited
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 John's Green, Kilkenny onto the Vacant Sites Register (VSR) in accordance with the provisions of Section 6(2) of the Urban Regeneration and Housing Act 2015. The Notice states that the Planning Authority is of the opinion that the site is a vacant site within the meaning set out in Sections 5(1(b) of the URH Act 2015.
- 1.2. The appeal site registered under VSL reference VSR 20-12, has one registered owner: City Cinemas Limited.

2.0 Site Location and Description

2.1 The subject site with an area of c.0.26 ha is located in Kilkenny City Centre. The site currently accommodates a derelict three storey building, formerly in use as a hostel. The building is a protected structure (RPS B112) and is described on the NIAH (Ref. 12000199) as:

“John's Green (a former hospital) is a detached seven bay detached seven bay three storey over basement hospital, opened in 1767, with a three bay, three storey pedimented breakfront and single bay, three storey central return to northeast. Subsequently converted to use as county infirmary, pre 1841.”

- 2.2 The site currently accommodates the former hostel building, an area of surface car parking and a smaller single storey gate lodge abutting the south eastern boundary. Both of the buildings on the site are vacant and in poor repair. The windows in the buildings have been boarded up. The former Waterford and Maryborough Branch railway line, which is elevated, forms the rear or northern boundary to the site. The overall site has been cleared and there are a number of planted areas and mature trees. The site interior and the buildings on site are readily visible from the street.
- 2.3 To the south east of the site is John's Green, a large public square which accommodates a public car park. There is a vehicular and pedestrian access to the site from John's Green. Further east, is commercial and residential development.
- 2.4 To the south, the site is bound by a high stone wall along the frontage with Barrack Street. Barrack Street accommodates a terrace of single storey cottages. To the

north west, is a medical centre and a factory. To the north of the site, is a large cinema complex and associated surface car park.

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. Prior to this, a Notice of Proposed Entry was issued to the landowner on the 21st of November 2019. This stated that the site consists of regeneration land.

3.1.2. Section 5(1)(b) of the Act stated that a site is a vacant site if, in the case of a site consisting of 'regeneration' land:-

- (i) The site, or the majority of the site, is vacant or idle, and
- (ii) 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 2000) in the area in which the site is situated or has adverse effects on the character of the area.

3.1.3 With regard to adverse effects, Section 6(6) of the Act sets out a number of criteria including:

- (a) land or structure in the area were, or are, in a ruinous or neglected condition;
- (b) antisocial behaviour was or is taking place in the area;
- (c) there has been a reduction in the number of habitable houses, or the number of people living in the area;
- (d) and whether or not these matters were affected by the existence of such vacant or idle land.

3.1.4 The Act defines regeneration land at Section 3 as follows:

“regeneration land means land identified by a Planning Authority in its development plan or local area plan, after the coming onto 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 structure 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 'General Business' with the objective: "*To provide for general development.*" The site is located within the Michael Street and Wolfe Tone Street Architectural Conservation Area. The existing hostel building on the site is a protected structure (RPS Ref. B1120).

3.2.2 The plan includes the following objective regarding St. John's Green:

MSACA 3: *To promote the restoration and appropriate re-use of derelict or vacant buildings, particularly the 18th century Infirmary building on John's Green.*

3.2.3 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.

3.2.4 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

Appeal Reference 303495-19

4.1 A previous appeal against entry onto the vacant site register in relation to the subject site was cancelled by the Board on the 24th of May 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.

4.2 The Inspector recommend that the entry be confirmed. Key points from the assessment included:

“The site boundary, a stout coursed stone wall is in good repair and adds character to the area. Conversely, the neglected condition of the buildings within the site that are easily viewed from the public realm detract from the character of the area. The site, therefore, accords with section 6(6)(a) of the 2015 Act.”

Planning Application Reference 04990079

4.3 Permission granted in February 2005 for a development comprising the demolition of the existing two-storey section at the eastern end and minor extensions at the western end of the existing hostel (a protected structure), demolition of boundary wall and gate lodge and relocation of entrance gateway (protected structures), and construction of a four-storey development comprising 32 apartments with balconies (11 no. 1-bedroom, 21 no. 2-bedroom), with three retail units at ground level over a basement carpark and change of use of the hostel with construction of a four-storey extension thereto to provide 12 no. apartments (4 no. 1-bedroom and 8 no. 2-bedroom, 4 of which have balconies).

Planning Application Reference 02990025

4.4 Permission granted in November 2005 for a development consisting of demolition of extension and gate lodge to a building of local importance, erection of a hotel on the site incorporating existing hostel, to consist of three storeys with recessed penthouse

floor on John's Green and 2 storeys with recessed penthouse floor on Wolfe Tone Street with basement level for car parking, with services under, provision of 108 bedrooms with associated leisure centre and restaurant, bars and conference facilities.

Application Reference 9990117

4.5 Permission refused in July 2000 to demolish extensions and gate lodge to a building of local importance to erect a hotel on site incorporating existing hostel to consist of 4 storeys over ground and basement for car parking and services under, provision of 125 houses, with associated leisure centre and restaurants, bars and conference facilities.

Nearby Sites:

Planning Application Reference 15/76

4.6 Demolition of a commercial building and construction of a 10 screen multiplex cinema and all ancillary site development works. Granted November 2015.

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 Regeneration. The following key points are noted:

- Site visits were undertaken on the 9th of October 2018 and the 5th of November 2019. Photographs accompany the report.
- Site has an adverse effect on the character of John's Green.

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

- The site continues to be a vacant site for the duration of the 12 months concerned. Photographs accompany the report.
- 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 City Cinemas Limited on the 27th of January 2020 which can be summarised as follows:

- Site should not be classified as a vacant site given it forms part of the cinema site as a whole.
- Since the cinema became fully operational, attention is now focussed on the site at John's Green.
- Feasibility study has been undertaken for the redevelopment of the hostel on the site to hotel accommodation. Copy of study attached.
- Efforts have been made to clear the surrounding gardens and area as well as paint and board up any damaged or broken windows of the hostel. Bridge arches have also been blocked up to discourage any antisocial behaviour.

6.2. Planning Authority Response

- No response received.

7.0 Assessment

7.1. Introduction

7.1.1. This Notice has been issued under the provisions of Section 5(1)(b) of the Act which relates to 'regeneration lands'.

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

- (iii) The site, or the majority of the site, is vacant or idle, and
- (iv) 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 2000) in the area in which the site is situated or has adverse effects on the character of the area.

7.2 **Vacant or Idle**

7.2.1 In terms of part (i), that the site, or the majority of the site, is vacant or idle, I note the site currently accommodates a number of vacant structures. The main building was formerly used as a hostel and the windows are now boarded up. The appellant does not contest that the site is vacant. I am satisfied from my observations on the site visit that the buildings on the site are performing no productive role and that the buildings are vacant and obsolete and that the site is idle.

7.2.2 I note that the previous entry of this site on the VSR was cancelled due to a procedural error regarding the 12 month period. In this case, the Planning Authority carried out at least 2 site visits with an intervening period of 12 months prior to the entry of the site onto the register. A site visit was undertaken on the 09.10.2018 and a subsequent visit on the 05.11.2019. The Section 7(3) Notice was issued on the 31.12.2019. I am satisfied that the PA have demonstrated that the site constituted a vacant site for a period of 12 months and that the site was vacant for the relevant period.

7.3 **Adverse effects amenities/character of the area**

(a) land or structure in the area were, or are, in a ruinous or neglected condition

7.3.1 The site currently accommodates a number of vacant buildings. Whilst the condition of the buildings would not be described as ruinous, they certainly are neglected and have a dilapidated appearance. I note that the appellant has stated that works have been undertaken to improve the visual appearance of the site and that the windows have been boarded up. This in my view however, does not mitigate the fact that the site and existing structures on the site clearly have a neglected appearance and that the presence of such derelict and vacant buildings in a prime urban area significantly detracts from the streetscape. I am satisfied that the neglected condition of these buildings and lands has an adverse effect on existing amenities and on the character of the area.

Antisocial behaviour was or is taking place in the area

7.3.2 With regard to anti-social behaviour, the PA proffered no evidence that anti-social

behaviour is taking place on the site. During my site visit, I did not note any evidence of anti-social behaviour occurring on the site.

There has been a reduction in the number of habitable houses, or the number of people living in the area

7.3.3 There is no evidence to suggest that as a result of the vacant site that there has been a reduction in the number of habitable houses, or the number of people living in the area.

7.3.4 In conclusion, I consider that 1 of the tests in Section 6(6) are met and that site is neglected and has an adverse effect on existing amenities and thus can be categorised as a vacant site as defined by Section 5(1)(b).

Other Issues

Feasibility Study

7.3.5 The appellant sets out that they have prepared a feasibility study and that it is intended that the site will be developed. There is however, no provision in the legislation to prohibit the entry of a vacant site onto the register on the basis that a planning application for their future development may be progressed. The 2015 Act is only concerned with the actual use on site and whether it is performing a specific purpose in order to determine if a site is vacant/idle. In this instance, the site is clearly vacant at present and this appears to have been the case during the intervening period. I am satisfied that the site was a vacant site for the relevant time period and continues to be a vacant site.

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 20-1) 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) The vacant and idle nature of the site and the resultant adverse effects on the character of the area resulting from the neglected condition of buildings on the site, 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