



An
Bord
Pleanála

Inspector's Report ABP-307358-20

Type of Appeal	Section 9 Appeal against section 7(3) Notice.
Location	Charvey Lane, Rathnew, Co Wicklow.
Planning Authority	Wicklow County Council.
Planning Authority VSL Reg. Ref.	VS/RN/01
Site Owner	Blessville Limited.
Date of Site Visit	15 September 2020.
Inspector	Stephen Rhys Thomas.

1.0 Introduction

- 1.1. This appeal refers to a section 7(3) notice issued by Wicklow County Council, stating their intention to enter the Lands at Charvey Lane, Rathdrum, County Wicklow 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 site lies c.300m west of the core of the village of Rathnew. It consists of very rough grassland overgrown with sporadic patches of gorse along Charvey Lane, a watercourse lies beyond the outlined site to its south. The southern boundary of the site that the council entered on the Vacant Site Register runs a distance of between 40 and 60 metres north of the watercourse that lies to the south of the site. The council stated the area of the site to be 1ha. Its eastern boundary adjoins the back garden walls and open space of the housing estate of Charvey Court. Its western boundary adjoins the access road to a business park occupied by industrial type buildings. There are some detached 20th century houses on the northern side of Charvey Lane opposite the site. The boundary of the site with Charvey Lane comprises a steel fence behind a wide grass margin, notices affixed to the fence state private property and that legal action was taking place concerning the lands. The fence is in moderate repair with some damage in places and the grass margin is overgrown. The area is characterised by industrial and business parks off the public road.

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 within the meaning of Section 5(1)(b) and 6(6) of the Act. The Notice is dated 26 March 2020 and is accompanied by a map outlining the extent of the site to which the Notice relates.

4.0 Development Plan Policy

Wicklow Town – Rathnew Development Plan 2013-2019

- 4.1.1. The site is zoned village centre under objective VC - To preserve, improve and provide for village centre uses.

Wicklow County Development Plan 2016-2022

- 4.1.2. Vacant Sites Register forms part of Urban Regeneration and Housing in Chapter 4 of the Plan 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 stand alone 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. In terms of Wicklow Town and Rathnew the following zones are included – TC, VC, PT, MU.

5.0 Planning History

- 5.1. Vacant site history

PA ref: VS/RN/01 and ref ABP-303648-19 – Section 7(3) Notice Cancelled.

- 5.2. Planning Application History

Subject site

PA ref 02/6330 – permission refused for an enterprise park with 6 units.

6.0 Planning Authority Decision

The site has been the subject of a previous section 7(3) appeal, ABP reference ABP 303648-19 refers. The planning authority have relied on the data from that file in relation to the current appeal.

6.1. Planning Authority Reports

- 6.1.1. Report of 15 January 2020 – the previous VSL file history is outlined. The current site amounts to 1 Hectare, less than the 1.42 Hectares that formed part of the previous file. The site was first inspected in 2017 and again on the 10 January 2020. The decision of the Board in relation to ABP 303648-19 is noted and the site has been reduced in area to accord with the appropriate zoning for inclusion on the register. The site remains vacant and unaltered since 2017, in accordance with section 5 and 6 of the 2015 Act, the lands have adverse effects on the area because of the neglected condition. Issue a Notice of Intent.
- 6.1.2. Report of 20 March 2020 – no response to the Notice of Intent letter. The lands may be used for grazing but the condition of land remains the same, the site history is noted and the site should be included on the register because it accords with section 5(1)(b) and 6(6)(i) and (ii)(a) of the 2015 Act. Place on the register.

6.2. The reports are accompanied by plan maps and site photographs.

6.3. Planning Authority Notices

- 6.3.1. A section 7(3) Notice issued on the 26 March 2020 referencing sections 5(1)(b) 6(6) of the Act, advising the owner that their site had been placed on the register, accompanied by a site map.
- 6.3.2. A section 7(1) Notice issued on the 22 January 2020, advising the owner that their site had been identified as a vacant site and invited submissions, also accompanied by a site map.

7.0 The Appeal

7.1. Grounds of Appeal

7.1.1. The landowner has submitted an appeal to the Board, against the decision of Wicklow County Council to place the subject site on the Register. The grounds of the appeal can be summarised as follows:

- The lands in question are in the ownership of Blessville Limited, however, a third party Billy Moorehouse of 1 Ballybeg, Rathnew, Co Wicklow, claims adverse possession of the lands concerned. This matter is being pursued but until the legal position is settled no planning application can be made. In this regard it is very much intended that a planning application will be made in due course.
- The lands do not accord with the definition of regeneration lands as set out in section 3 of the 2015 Act. The lands are greenfield in nature and the condition of the site does not accord with criterion 5(1)(b)(ii) and section 6(6) of the Act. As set out by the previous Inspector with regard to ABP-303648-19, antisocial behaviour was not occurring and the condition of the site was not impacting on the character of the area. It is not expected that the site will deliver a substantial change in housing.
- The site is not ruinous it may appear neglected because it is an empty space. However, the site is fenced and signed as private property. The vacancy of the site does not impact upon the public infrastructure of the area

The appeal is supported by the section 7(3) notice and map.

7.2. Planning Authority Response

7.2.1. The site is appropriately zoned and in accordance with requirements of the 2015 Act for inclusion on the register. An appeal in relation to ABP-302252-18 is noted as it sets out the proper implementation of the register, and agrees that the planning authority have correctly applied and implementation the Vacant Site Levy.

7.2.2. The report of the Inspector in relation to ABP-303648-19 is noted, however, the Board's direction chose only to remove the lands in relation to zoning rather than the circumstances of the site, either condition or status as a regeneration site.

- 7.2.3. The site meets the tests for a vacant site under section 5(1)(b) and 6(6), recent decisions in Wicklow are referenced ABP-303649-19 and ABP-304095-19 are referenced. The subject site is seen as in a worse condition than either of those.
- 7.2.4. Contrary to that asserted by the appellant, permission was refused for development on the site in 2002 and no recent pre-planning consultation have taken place. The most recent pre-planning consultation took place in 2018.
- 7.2.5. The planning authority make no comment in relation to legal issues concerning adverse possession.

7.3. Further Responses

- 7.3.1. The appellant has repeated their claim that the site is not a regeneration site; it does not accord with the definition of same in the Act and because the site condition does not comply with all of section 6(6).
- 7.3.2. The appellant disputes that the cases mentioned by the planning authority are directly comparable to the subject site, namely ABP-303649-19 and ABP-304095-19. In the case of the Murrough site, it is located in an 'Opportunity Site' and so can be considered a regeneration site. In the second example, located in the centre of Newtownmountkennedy, the situational factors are different from the subject site that is located remote from Rathnew village centre.

8.0 Assessment

8.1. Introduction

- 8.1.1. An appeal under section 9 of the Act, requires that the burden of showing that the site was not a vacant site 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 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. The subject site was entered onto the Wicklow County Council VSR on the 26 March 2020.
- 8.1.2. The Section 7(1) Notice was issued under the provisions of Section 7(1) of the Act, to which the owner did not respond. The Section 7(3) Notice was issued under the provisions of Section 5(1)(b) of the Act which relates to regeneration lands. The

assessment undertaken by the Planning Authority to inform the placing of the site on the Register, which I outline in section 6.1 above, refers to the tests included for regeneration under section 5(1)(b) and by reference to Section 6(6) of the Act as is required for lands zoned for regeneration purposes. The lands are zoned for regeneration purposes as outlined by local development plan.

- 8.1.3. The main concerns of the appellant is that the lands are currently the subject of an adverse possession claim by a third party, to which a legal solution is currently in train, this has stalled any development of the land. In addition, the lands cannot be considered regeneration land and the site is not neglected and not impacting on the amenities of the area. The planning authority do not agree and are satisfied that the lands do qualify as regeneration lands, the site has been vacant for some time, it is neglected and impacting on the character of the area.
- 8.1.4. I am aware that the site in question and additional lands were the subject of a previous section 18 appeal, ABP 303648-18 refers. The Board's decision on that appeal was to cancel the entry of the site on the register because a portion of the site were on lands zoned for passive open space and therefore would not qualify as regeneration lands under the terms of the 2015 Act. On this occasion the site has been reduced in size to accord with the boundaries of the Village Centre zoning. For the purposes of this assessment, I will consider all the relevant points raised by the appellant and planning authority. This is however, a new appeal, on an amended site and so my examination will be made afresh.

8.2. **Land Ownership**

- 8.2.1. The appellant has stated that the lands in question are the subject of legal proceedings concerning an adverse possession claim by a third party, named in the appeal material. These proceedings, it is stated, are ongoing and no conclusion has been reached. The appellant states that this has prevented any forthcoming planning application to develop the lands and until the matter is settled no planning application can be made. The planning authority note that permission to develop the lands as an industrial estate was refused in 2002, and that pre-planning engagement last occurred in 2018.
- 8.2.2. I note that the site may well be subject to contentious legal issues concerning adverse possession and it may not have been possible to undertake development of

the site. The case made by the appellant in relation to legal issues on this site are outside the scope of the 2015 Act in terms of an appeal against entry on the register. I note that the appellant does not dispute that they are the legal owner of the lands and they do not raise issue with the service of the notice. Whilst ownership is relevant to the charging of a vacant site levy, it is, in my opinion, outside the narrow focus of the Board's role in relation to Section 9 Appeals. Section 9(3) of the 2015 Act clearly states that the Board's role is to determine whether or not a site was vacant or idle for the relevant period. Ownership matters are therefore not relevant to the status of the site in the context of the 2015 Act.

8.2.3. Moreover, the appellant states that legal issues regarding ownership of the site are yet to be concluded. The 'owner' of a site is included in the definitions set out in section 3 of the 2015 Act, owner means as follows:

(a) in relation to land that is registered land within the meaning of the Registration of Title Act 1964 , the registered owner, and

(b) in relation to all other land, a person, other than a mortgagee not in possession, who, whether in his or her own right or as trustee or agent for any other person, is entitled to receive the rack rent of the land or, where the land is not let at a rack rent, would be so entitled if it were so let;

8.2.4. Ownership has no impact upon the assessment of whether a site should be included on the register or not. Section 17 of the 2015 Act, sets out procedures in relation to the charging of the levy, change of ownership is relevant in that instance. Irrespective of any change or confirmation of ownership within the meaning of the 2015 Act, the burden of demonstrating whether a site is vacant or not lies with the owner of the site, as set out in Section 9(2) of the 2015 Act. The appellant is the undisputed owner of this site at this time. If the site complies with the definition for regeneration land, as outlined by the Act, then it is suitable for placement on the register irrespective of any pending legal matters.

8.3. **Regeneration Lands**

8.3.1. The appellant questions the rationale for ascribing the site in question as regeneration lands simply based upon the zoning objective. It is argued that the greenfield nature of the site, its current condition and remove from the actual village centre, all mean that it is not a regeneration site and should not be on the register.

The planning authority refer to other section 9 appeals in the county where the implementation of the 2015 Act and the reference to various zonings as suitable for regeneration purposes was supported by the Board.

8.3.2. In summary the appellant concludes that the Council have failed to correctly implement the Urban and Regeneration Housing Act 2015 and not identified specific regeneration areas in their Development Plan. I note that Policy HD19 in Chapter 4 of the Wicklow CDP 2016-2022 refers to Urban Regeneration and Housing. In this regard, it is noted that all lands zoned 'Town Centre' and for the purposes of the subject site 'Village Centre' in the plan 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. It is clear to me that the Council have identified that all 'Village Centre' zoned land in Rathnew will be considered for regeneration purposes and in my view all examinations to determine suitability or otherwise have already occurred in the survey and analysis employed in the establishment of the register. I am therefore satisfied that the County Development Plan incorporates the appropriate policy background to facilitate the establishment of a Vacant Sites Register in accordance with the 2015 Act. This time around, the planning authority have delineated the site to accord with the correct zoning objective, omitting Passive Open Space zoned land.

8.3.3. In the context of this appeal, the locational attributes and condition of the site have no part to play in considering the eligibility for inclusion on the register. The relevant development plan has already ascribed, by virtue of zoning objectives, where regeneration sites are to be found. To reinforce this point, I note the definition of regeneration lands in section 3 of the 2015 Act, as follows:

“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;

Accordingly, the site is located on 'VC' village centre zoned lands in the Wicklow Town – Rathnew Development Plan 2013-2019 and the Development Plan expressly sets out that lands zoned TC, VC, PT and MU in Wicklow and Rathnew may include

sites where the levy should be applied. Therefore, it is reasonable to expect that sites situated on lands so zoned would be considered for inclusion on the register, irrespective of their condition or location.

8.4. Vacant or Idle?

8.4.1. Section 5(1)(b) refers to lands considered to come within the meaning included for Regeneration Land and the tests for such sites are as follows:

(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 of 2000) in the area in which the site is situated or has adverse effects on the character of the area.

8.4.2. The site must meet both tests and I will address each in turn.

8.4.3. Vacant or Idle – The appellant advances no actual use for the site but the planning authority mention grazing as possible, though no evidence of same is presented. I note the Inspector's conclusions in relation to the use of the site in a previous section 18 appeal. On the day of my site visit I observed that horses were grazing the subject lands. The owner of the site has not specified any use for the site, it is quite possible that they are unaware that the lands are effectively in use for the casual grazing by a small number of horses.

8.4.4. The 2015 Act does not list the types of uses that can be considered for regeneration lands, indeed the Act simply refers to lands that are vacant or idle. The burden of proving that the lands are not vacant or idle falls to the owner. The owner has not stated a use for the site. There has been case law that explores definitions and interpretations of Acts in general and the Urban and Regeneration Act 2015, in particular. In a very limited interpretation of the 2015 Act, I find that the lands were in fact in use on the day of my site visit, contrary to the appellant's viewpoint. However, it would appear that for the period concerned, 12 months before placement on the register the site was indeed vacant. I conclude that the site is vacant and idle and the council has stated that it has been so since at least 12 months before it was entered onto the register. The appellant has not sought to contradict those statements.

8.4.5. For the purposes of Section 5(1)(b) of the 2015 Act that refers to the site, or the majority of the site, is vacant or idle, I am satisfied that this is the case and the lands concerned were vacant or idle for the period concerned. This may not be the case since the 26 March 2020, but this is a matter for the owner to take up with the planning authority under Section 10(1) of the Act, as follows:

The owner of a vacant site that stands entered on the register under section 6(2) shall notify the planning authority in whose functional area the site is located if it is no longer vacant or idle.

8.4.6. Adverse Effects – The appellant states that the site is not neglected, it is well fenced, secure and signs notify the public that it is private lands. The appellant claims that none of Section 5(1)(b)(ii) as expanded by Section 6(6) are met. The planning authority disagree and specifically mention the neglected nature of the site and the presence of litter as factors that indicate antisocial behaviour. I note that the previous Inspector also considered the condition of the site and was not so concerned that the site met all the criteria set out in Section 6(6) of the 2015 Act. The appellant relies on these statements to reinforce their assertion that the site cannot be considered a vacant site. The planning authority disagree and see that the site should remain on the register precisely because of its vacancy and its neglected condition and accordance with Section 5(1)(b)(i) and (ii).

8.4.7. As I have already stated, my assessment of the site will take into account all the relevant matters in the current appeal before the Board and the circumstances of the previous section 18 appeal are noted. For instance, I note the previous Inspector's Report and its recommendation in light of the Board's Order that required the removal of the site from the register because of a zoning irregularity. The condition of the site was not expressly mentioned in the Board's Order, the planning authority note this too.

8.4.8. In order to be considered a vacant site under Section 5(1)(b) a site must also meet the test outlined in Section 5(1)(b)(ii) that being that 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. This test is considered by reference to Section 6(6) of the Act which

states that 'a planning authority, or the Board on appeal, shall determine whether or not the site being vacant or idle has adverse affects 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.

8.4.9. Therefore, these are the tests which determine whether or not the site being vacant or idle has adverse affects on existing amenities or reduces the amenity provided by existing public infrastructure and facilities. The planning authority outlines in detail the condition of the site and examines the tests included in Section 6(6).

8.4.10. Firstly, the planning authority note the condition of the site and the impact it is having on the amenities and character of the area. The character of Rathnew in general and the immediate area in particular, is mixed. From my observations of the site it is difficult to conclude that the lands stand out as a particularly neglected site. There are no buildings on the site to be ruinous or neglected, however, the lands are overgrown and not maintained to any discernible degree. This site can be viewed from the public road and so in my mind has the potential to influence the character of the area. The character of the area is defined by a number of elements: the lane that provides access to the industrial lands, the residential boundary walls of Charvey Court, the industrial estate to the west and the riparian lands that link through to the village centre along the R772. I would describe the area in general as transitional, the public realm is rundown and other spaces are neglected to some degree by various owners, some more than others. I think it would be harsh to conclude that these lands as viewed from the street have been especially neglected, particularly in the context of the broader hit and miss character of Charvey Lane. Nor am I

convinced that the condition of the site is having any impact upon the existing public infrastructure and facilities of the area.

8.4.11. The second matter 6(6)(b) refers to anti-social behaviour which was or is taking place in the area. I did not detect excessive or even obvious levels of litter on the street outside the site. This is a location along a route to industrial and business parks where a certain degree of litter may be expected and not necessarily a signal that anti-social behaviour is or has taken place. It is more likely that litter has accumulated because of a general lack of care for the area as a whole. I did not observe any obvious incidences of graffiti or vandalism. I do not consider anti-social behaviour in terms of the Act referring to such behaviour which was or is taking place, is in fact taking place in the area. I do not consider that the site would meet this test.

8.4.12. There is no evidence, either from the appellant or the planning authority to address part (c). Because the Act includes commas and an 'or' between (a), (b) or (c), only one criteria is required to be met. In the absence of compelling evidence either way, I am inclined to advise the Board that it would appear unreasonable to include the site on this basis without any information to support such a view. Should the planning authority wish to compile information in this regard, they can of course begin the process of re-registering the site if appropriate. In that context, I am satisfied that the site fails to meet any of the requirements of section 5(1)(b)(ii) of the 2015 Act.

8.5. **Procedural Matter**

8.5.1. The Board should note that the calculation of time limits was adjusted during a period of emergency in the first half of 2020, the Emergency Measures in the Public Interest (Covid-19) Act 2020 refers. This may impact upon any Order that the Board decide to make and the adjustment to any time periods should be duly considered in the context of Section 251A(1) and (2) of the Planning and Development Act 2000 (as amended).

9.0 **Recommendation**

9.1. I recommend that in accordance with section 9(5) of the Urban Regeneration and Housing Act 2015 (as amended), the Board should cancel the site (VS/RN/01), that

was not a vacant site for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 26 March 2020 shall be removed.

10.0 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 submitted by the appellant;
- (c) The report of the Inspector;
- (d) The moderately maintained condition of the site in the context of the surrounding area, despite the majority of the site being vacant or idle,

the Board considers that it is appropriate that a notice be issued to the planning authority who shall cancel the entry on the Vacant Sites Register.

Stephen Rhys Thomas
Senior Planning Inspector

16 September 2020