



An
Bord
Pleanála

Inspector's Report ABP-309326-21

Type of Appeal	Section 9 Appeal against section 7(3) Notice (VSR 21-8).
Location	Circular Road, Kilkenny.
Planning Authority	Kilkenny County Council
Planning Authority VSL Reg. Ref.	VSR21-8
Site Owner	Elm Park Construction Limited.
Planning Authority Decision	Place on Register.
Date of Site Visit	01 July 2022.
Inspector	Stephen Rhys Thomas.

Contents

1.0 Introduction.....	3
2.0 Site Location and Description	3
3.0 Statutory Context	3
4.0 Development Plan Policy	4
5.0 Planning History.....	6
6.0 Planning Authority Decision	7
7.0 The Appeal	7
8.0 Assessment.....	9
9.0 Recommendation.....	12
10.0 Reasons and Considerations	12

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 Circular Road, 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, which is irregular in configuration is located approximately a kilometre to the southwest of Kilkenny City. The site is prominently located at the junction of College Road and Callan Road, which defines the site's south-eastern boundary and Circular Road, which defines the site's north-eastern boundary. The junction itself is a roundabout. The boundary to the northwest adjoins a residential estate Rose Hill Court, a cul-de-sac development with a mix of terraced, semi-detached and detached dwellings. The remaining boundary to the southwest adjoins a commercial vehicle centre.
- 2.2. The site is level and surrounded by hoarding and a metal fence backed by plastic mesh. The site is overgrown with a variety of vegetation. There is a footpath along the site's roadside boundaries and a wall constructed to the boundary with Rose Hill Court.

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 site was assessed within the meaning of Section 5(1)(a) of the Act. The Notice is dated 31 December 2020 and is accompanied by a map outlining the extent of the site to which the Notice relates.
- 3.1.2. Section 5(1)(a) of the Act stated 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.

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.

4.0 Development Plan Policy

4.1. The **Kilkenny City and Environs Development Plan 2014-2020** is the operative development plan for the subject appeal. The site is located on lands that are subject to zoning Existing Residential – ‘Objective: To protect, provide and improve residential amenities.’.

Variation 4 of the development plan (October 2017) is to reflect the vacant site levy provisions. 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.

4.2. **Kilkenny City and County Development Plan 2021-2027**, was made on the 3 September 2021 and came into effect on the 15 October 2021.

6.6 Vacant Site Levy

A vacant site levy was established under the Urban Regeneration & Housing Act 2015. This levy is a site activation measure, to ensure that vacant land in urban areas is brought into beneficial use. At the passing of this Act, the Minister stated the levy is a "visible demonstration of the Government's commitment to tackle reasons why so many key sites that are suitable for development are not coming forward at a time of such a major need for housing".

The Urban Regeneration and Housing Act set out two broad categories of vacant land that the levy may apply to:

- i) Lands zoned primarily for residential purposes
- ii) Lands in need of regeneration

The Levy is an integral part of the development planning process to incentivise the development of vacant or idle sites identified by planning authorities as "regeneration land" or "residential land", with a view to bringing such sites into beneficial use. It can be imposed by planning authorities under certain conditions in designated areas where sites remain vacant and site owners/ developers fail to bring forward reasonable proposals, without good reason, for the development/reuse of such property in line with the provisions of the relevant local area or development plan.

The Council will examine lands within the City and County, as appropriate as part of its active land management strategy for the purposes as set out in the Urban Regeneration and Housing Act 2015, in relation to the Vacant Site Levy. The Vacant Sites Register is reviewed on an annual basis (See Section 4.2.1 also).

Objective 6D - To identify vacant sites where appropriate zoning applies and maintain a Vacant Sites Register in the plan area for the purpose of the Vacant Site Levy.

Objective 4C - To actively promote the redevelopment and renewal of areas in need of regeneration whether urban or rural through appropriate active land management measures during the period of the Plan.

Volume 2 Kilkenny City

The site is zoned Existing Residential on Figure CS4 Kilkenny City Zoning map.

6.5 Active Land Management

6.5.1 Vacant Sites - The Council engages in active land management in order to incentivise the development of vacant or idle sites identified as “regeneration land” or “residential land”, with a view to bringing such sites into beneficial use. This ensures the maximising the impact of public funds and expenditure on infrastructure.

Volume 1, Section 6.6 Vacant Site Levy sets out the position as a whole for the City and County.

Objective C6G - To identify vacant sites where appropriate zoning applies and maintain and update a Vacant Sites Register in the plan area for the purpose of the Vacant Site Levy.

5.0 Planning History

PA ref **P21/577** – permission for the development of 22 residential units. Jan 2022.

PA ref **P19/421** – permission was previously granted for the construction of a 15 unit residential development. (Ref 17/162) Planning permission is now sought for proposed amendments to the permitted design of the 7 no. terraced houses element mentioned above. August 2019.

PL10.248925 (PA ref 17/162) - Construction of 15 residential units consisting of 8 no. apartments and 7 no. houses with all associated site works. Feb 2018.

PA ref **16/573**- permission refused for construction of 14 unit residential development.

PA ref **15/824** - permission refused for construction of 12 unit residential development.

6.0 Planning Authority Decision

6.1. Register of Vacant Sites Report:

First report (20/11/2020) – Site was first assessed November 2018 and placed on the register but removed once development works had begun. Construction works have stopped, and no activity took place between 11/11/2019 and 2/11/2020. The site is greater than 0.05 Hectares, is zoned residential, there is a need for housing and site is suitable for housing.

Second Report (21/12/2020) – details as per the first report, submission received and noted, place site on the register.

The reports are accompanied by photographs and a map.

6.2. Planning Authority Notice

6.2.1. A section 7(3) Notice issued on the 31 December 2020, advising the owner that their site had been placed on the register, accompanied by a site map. The Notice was sent to Elm Park Construction Limited.

6.2.2. A section 7(1) Notice issued on the 20 November 2020, advising the owner that their site had been identified as a vacant site and invited submissions, also accompanied by a site map. The notice references section 7(1) of the 2015 Act.

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 Kilkenny County Council to enter the subject site on the Register. The grounds of the appeal can be summarised as follows:

The chronology of events on site:

- Permission was granted on the site for 15 residential units on 20 February 2018, ABP reference PL10.248925 refers.
- A new boundary wall was completed, commencement notice CN0040527KK refers.
- The project is progressing and the foundations of 7 townhouses have been constructed, commencement notice CN0045711KK refers. Ground works continue with regard to water services.
- The first instalment of phased development contributions have been paid, €4,000.
- The name of the estate has been agreed, 'College Crescent' and an application for connection has been applied for.
- There is now an intention to construct the vehicular entrance and roadside boundary wall, an application for a roads opening licence has been lodged. A traffic management plan is being prepared.
- The site is not vacant, but currently closed due to Covid restrictions. A redesign of the apartment units may be required, this has not yet been decided.

The sequence of events set out above, detail the normal set of events that would progress a site design construction and involves the marketing of units, sale and funding for following units.

7.2. Planning Authority Response

- Since the initial entry of the site on the register was cancelled in 2017 (ABP-300568-18), no substantial works have taken place. A site inspection in 2020 determined that the site continues to satisfy the requirements of the 2015 Act under section 5(1)(a).
- The vacant site levy is a mechanism to active sites, should the developer decide to redesign units, that is their business.

- The pandemic halted construction activity for a period in 2020 and again in 2021. In the context of the four year vacancy of the site, the construction hiatus cannot be deemed a critical factor. Once the site is fully operational for housing, it will be removed from the register.

7.3. Further Response

7.3.1. The appellant has submitted a response to the planning authority's submission, as follows:

- The site is under construction for 15 residential units and should be allowed to complete the development within the five years of the planning permission. The expiration date of the final grant of permission for P19/421 is 4 September 2024. Once the roadside entrance and boundary works are commenced, works on the seven units can continue, pending Covid restrictions. The developer reserves the right to lodge subsequent planning applications to cater to any emerging housing market.

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 Kilkenny County Council VSR on the 31 December 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 responded. The Section 7(3) Notice was issued under the provisions of Section 5(1)(a) of the Act which relates to residential lands. The assessment undertaken by the Planning Authority to inform the placement of the site on the Register, which I outline in section 6.1 above, refers to the tests included for residential lands under section 5(1)(a) and by reference to Section 6(4) and 6(5) of the Act as is required for lands zoned for residential purposes. The lands are zoned Existing Residential in the Kilkenny City and Environs Development Plan 2014-2020,

to protect, provide and improve residential amenities. This residential zoning is identified by Objective 4 of the operative plan as lands that can be considered as residential for the purposes of the levy. The lands are zoned for residential purposes. The site is considered residential lands for the purposes of the 2015 Act.

8.1.3. The Kilkenny City and County Development plan 2021-2027 is currently the operative plan and the site is zoned Existing Residential on Figure CS4 Kilkenny City Zoning map. For the purposes of my assessment, I consider that the previous plan is the correct plan to apply, given that the time period used for the application of the levy was 2020. In any case the land use zoning has not changed in the new development plan and it remains residential.

8.1.4. The main concerns of the appellant are that; the site is not vacant but in use for the construction of housing. The period of construction has been elongated by the Covid pandemic and the possibility of a change in housing type that has resulted from experiences during the pandemic. The appellant makes the point that construction has been slow, and this has been out of their control, but ultimately they should be permitted to complete construction within the lifetime of the operative permission, until September 2024, reference P19/421 refers. The planning authority do not agree and are satisfied that the lands are not in full and active use, though construction activity did occur the site has been vacant for the period of 2020.

8.2. Vacant or Idle

8.2.1. As I have indicated at section 6.1 of my report, the initial site assessment report prepared by the planning authority shows that the period of twelve months prior to the placement of the site on the register, the site was not in use. The planning authority have detailed that though construction activity has taken place, it had for the period concerned stopped and so the site was a vacant site.

8.2.2. The grounds of appeal lodged by the owner do not address any of the criteria set down by section 6(4) and 6(5) under section 5(1)(a) of the 2015 Act, other than that the site was in use, but that construction activity had been arrested on site by Covid restrictions. The owner has not questioned the suitability of the site for housing or whether there is a housing need in the area. The sole objection from the owner is that works on constructing the permitted houses has already started and will recommence once Covid restrictions ease. In addition, the appellant states that it is

reasonable to expect that their current model of housing delivery can occur within the lifespan of the permission, up to September 2024. The planning authority do not accept that the site is or was in active use, very little if any works have occurred since the site was removed from the register in late 2019. Covid restrictions have interrupted construction projects, but in the context of this site, more could be done to complete the construction of houses.

8.2.3. The site has planning permissions for residential units and according to the appellant works are underway to implement an active permission. The planning authority note that since construction activity took place and the site removed from the register, no further works have taken place and the site remains vacant. From my observations of the site, I can confirm that there are no upstanding elements to the proposed development and furthermore the site is quite overgrown and shut up. I agree with the observations of the planning authority insofar as the site appears to have been inactive during the period November 2019 to November 2020. If the site had remained active then I would expect some sort of completed development to occupy the site, it does not. The appellant remarks that Covid restrictions paused construction activity during 2020 and that is one of the reasons why the site was inactive. That may be the case, but there were periods when restrictions were eased allowing construction activity to take place. I appreciate that pauses in activity may have occurred and that the residential scheme may have to be altered meaning possible changes to the site layout and design. However, I have to agree with the observations of the planning authority for the period concerned and that the site was idle and thus a vacant site.

8.2.4. The Board may wish to note that under section 10 of the 2015 Act, the obligation to notify the planning authority of any changes in the status of the site is on the owner, as follows:

(1) 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.

(2) If, at any time, a planning authority is satisfied that a site that stands entered on the register under section 6 (2) is no longer a vacant site it shall cancel the entry on the register in respect of that site.

Consequently, it is in the owner's power to provide suitable evidence to satisfy the planning authority that the site is no longer vacant or idle and cancel the entry of the site on the register, if significant works on site were to recommence.

- 8.2.5. The appellant has not put forward any use for the site over the relevant period. My observations of the site would agree with the planning authority's conclusion that the site has been vacant for some time. I am satisfied that the site was vacant or idle, and can therefore be considered a vacant site in full accordance with section 6(2) of the 2015 Act.

8.3. Housing need and suitability

- 8.3.1. The appellant 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 5(1)(a)(i) and (ii) of the 2015 Act, in terms 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, there is an extant permission for housing on the site and some construction activity appears to have already started.

- 8.3.2. 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. In addition, section 5(1)(a)(iii) of the 2015 Act, has been met due to the inactivity of the site during the relevant period and the site should remain on the register.

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 confirm the entry on the register of site (VSR21-8) was a vacant site for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 31 December 2020 shall be deemed to take effect from that date.

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 Planning Inspector,
- (d) The 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.

Stephen Rhys Thomas
Senior Planning Inspector

20 July 2022