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Bord  
Pleanála

## Inspector's Report ABP-309328-21

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<b>Type of Appeal</b>	Section 9 Appeal against section 7(3) Notice.
<b>Location</b>	Oracle Villa, Greenshill, Co. Kilkenny.
<b>Planning Authority</b>	Kilkenny County Council.
<b>Planning Authority VSL Reg. Ref.</b>	VSR21-1.
<b>Site Owner</b>	Kenny Hunt.
<b>Planning Authority Decision</b>	Place on Register.
<b>Date of Site Visit</b>	01 July 2022.
<b>Inspector</b>	Stephen Rhys Thomas.

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## 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 Oracle Villa, Greenshill, Co. 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 site is located along the Green's Hill Road, east of the River Nore in Kilkenny City. Green's Hill Road links housing estates to the north of Kilkenny with the city centre to the south, it is characterised by detached and older housing stock. The subject site is occupied by a single dwelling set amidst a large garden. The road frontage comprises a low wall backed by a mature hedgerow and trees. The dwelling on the site dates from the early twentieth century and is in reasonable repair. The windows and doors are boarded up and the gardens are overgrown. The house is not occupied.

## 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.

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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**

None.

## **6.0 Planning Authority Decision**

### **6.1. Register of Vacant Sites Report:**

First report (20/11/2020) – Site photographs date from 21 June 2019 and 7 November 2019, site inspection was carried out on 30 October 2020. The site is 0.24 Hectares, house is not occupied, 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, until the site is occupied and in use it remains vacant, 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 Kenny M Hunt and Mary Hunt.
- 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 appellant states that the appeal is made on behalf of Kenny Hunt (owner) and Marc Hunt (resident of the property).
  - Oracle Villa is a Victorian dwelling, currently unoccupied and registered as Folio KK13075.
  - The property is in the ownership of Kenny Hunt, was occupied by family members, was vacated and fell into disrepair.
  - In 2018 Marc Hunt (son of Kenny Hunt) came to Ireland, sought to dwell in the house but did not have the means to carry out repairs. The advice of an Architect was sought to remedy repairs (letter and quote attached), savings have been amassed and works had been hoped for in 2020. However, Covid restrictions have limited opportunities to carry out repairs. The house and gardens have been regularly maintained throughout this time.

- Section 5(2) of the 2015 Act defines 'home', the site registered is occupied by a house in a large garden. However, Marc Hunt cannot claim to reside in the house, but the Act allows for periods of vacancy.

The appeal is accompanied by Land Registry details and architectural particulars.

## 7.2. **Planning Authority Response**

- A planning application to develop the lands was submitted in 2005, for 14 units, but was deemed withdrawn after a further information request went unanswered. Covid restrictions may have delayed works but did not impact any of the statutory planning application processes.
- Marc Hunt cannot be considered as ordinarily residing at the property, having never occupied it since arrival from USA in 2018.

## 7.3. **Further Response**

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

- Despite the operational planning processes during Covid restrictions, Marc Hunt did not have the financial reserves to undertake renovations of the property.
- The statutory concept of ordinarily resident, can mean a person can be ordinarily resident even though a property is vacant. Marc Hunt has no permanent abode, he is living with his aunt.
- Is Oracle Villa in an area in need of housing? According to the core strategy of the development plan, most or all new houses will be located in the western environs and Loghmacansk areas, not the location of the site.
- The site is not suitable for housing, the core strategy does not designate the area in which Oracle Villa is located for housing growth.

## 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.
- 8.1.4. The main concerns of the appellant are that; the site is not vacant but in use as a home or at least had been during the time period concerned. In addition, the appellant questions whether there is a housing need in this part of Kilkenny, when the development plan concentrates housing need elsewhere. The planning authority have demonstrated that the property was not occupied from June 2019 to October 2020. In addition, the planning authority view the property as a vacant site because it has been unoccupied for so long that it cannot be considered a home in the context of the 2015 Act.

## 8.2. **Use as a home**

8.2.1. From my observations of the site, I can confirm that a house occupies a large garden, adjacent to the road, like many other properties along Green's Road. Unlike many other properties along this road, the house is boarded up and clearly not occupied. This is confirmed for the period concerned by the inspections conducted by the planning authority.

8.2.2. The appellant's contention is that the site cannot be considered for inclusion on the register because it is a home, as defined by section 5(2) of the 2015 Act as follows:

*“home”, in relation to a person, means a dwelling in which the person ordinarily resides (notwithstanding any periods during which the dwelling is vacant) and includes any garden or portion of ground attached to and usually occupied with the dwelling or otherwise required for the amenity or convenience of the dwelling.*

8.2.3. The appellant's argument is that the house is a home for Marc Hunt, however, he has not resided in the house since his return from the USA. This is a point made by the planning authority and more or less confirmed by the appellant's contention that Marc Hunt has a sincere intention to reside permanently at Oracle Villa. So, it is apparent to me that the house has not been occupied for some time, it has remained empty, uninhabited, thus vacant and idle. Incidentally, I note that unlike other properties on the area, the subject building does not possess an Eircode identifier. Further reinforcing the theory put forward by the planning authority that the house has not been lived in for some time.

8.2.4. I appreciate that the owner hopes to reside in the house and has met with difficulties, both in terms of finances and Covid restrictions, that have meant repairs and renovations have been delayed. As the 2015 Act states, a home, in relation to a person, is a place that a person ordinarily resides and in this case the owner has never lived here, no matter how sincere their intentions are. For these reasons, I consider that the site can be considered as a vacant site, it does not conform to the definition of a home because of its lengthy periods of vacancy. The property has not served as a home for some time and particularly during the period for which the planning authority made inspections during 2019 and 2020.

### 8.3. **Housing need and suitability**

8.3.1. The appellant has made some observations as to whether there is a need for housing in the area and has directly challenged the Core Strategy and the Development Plan objectives for targeting housing at specific locations in the city other than at Oracle Villa. Reference is made to section 5(1)(a)(i) of the 2015 Act, section 6(4) states the following:

*A planning authority, or the Board on appeal, shall determine whether or not there was a need for housing in an area within the planning authority's functional area for the purposes of this Part by reference to—*

*(a) the housing strategy and the core strategy of the planning authority,*

*(b) house prices and the cost of renting houses 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 per cent of the total number of houses in the area.*

8.3.2. Taking each subsection in turn, I can see that the assessment report prepared by the planning authority refers to a Determination of Housing Need, but there is no analysis on file in relation to house price/rental costs, social housing statistics or the availability of houses to rent or buy. I do not see this as a serious failing in the procedure of preparing a Vacant Site Register for Kilkenny. I do note that the core strategy of the Development Plan targets new residential development to strategic locations throughout and around the city. I do not think that the analysis required by the Determination of Housing Need study prepared by the planning authority would necessarily target individual sites but would rather take a more holistic view of housing need. That is why the VSR refers to all residentially zoned land, if section 5(1)(a) is to be applied, such as in this case.

8.3.3. It is clear that much more housing is necessary in and around Kilkenny City and this is the reason for zoned land and a core strategy that anticipates growth. In this respect I note that the Regional Spatial and Economic Strategy for the Southern

Region identifies Kilkenny as a key town where growth is expected to be channelled. It is not correct to take the view that because the subject site is not targeted for new housing development, and how could it be, that the site cannot be considered for inclusion on the register. The Development Plan has identified that land zoned Existing Residential can be considered as a vacant site and this is the case with the subject site, Variation 4 of the Development Plan (October 2017) refers.

- 8.3.4. In terms of whether the site is suitable for housing, section 5(1)(a)(ii) of the Act refers, the existence of a building that resembles a house, confirms this. The placement of a site on the register requires three criteria to be fulfilled under section 5(1)(a)(i), (ii) and (iii) of the 2015 Act. I would advise the Board that there have been recent amendments to the Urban Regeneration and Housing Act 2015 as a result of the Planning and Development (Amendment) Act 2018. Specifically, section 5 of the Act of 2015 is amended, in paragraph (a) of subsection (1), by substituting the following subparagraph for subparagraph (iii):

*“(iii) 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.”.*

- 8.4. I am convinced that both sections 5(1)(a)(i) and (ii) of the 2015 Act are fully met; housing need and site suitability for housing. Furthermore, as detailed by me in section 8.2 of this report, the site is a vacant site in accordance with section 5(1)(a)(iii)(I) of the 2015 Act because of the unoccupied nature of the house on the site. The amendment requires a site to be vacant/idle OR used for a purpose other than the provision of housing in terms of the most recent purchase in accordance with both parts (A) and (B). In this instance, the majority of the site is a vacant site, parts (A) and (B) do not apply. I am satisfied that the site is a vacant site and the site

should remain on the register as all three requirements under section 5(1)(a) of the 2015 Act (as amended) have been met.

## 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 (VSR21-1) 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 appearance of the lands as a vacant site and though a residence comprises the site, it was not occupied during the relevant period and does not constitute a dwelling that was ordinarily resided in by the owner, and
- (e) 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.

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Stephen Rhys Thomas  
Senior Planning Inspector

20 July 2022