



An  
Bord  
Pleanála

## Inspector's Report ABP-311953-21

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<b>Type of Appeal</b>	Section 9 Appeal against section 7(3) Notice.
<b>Location</b>	Lands measuring 0.44ha. located at Bray Head Hotel, Strand Road, Bray, Co. Wicklow.
<b>Planning Authority</b>	Wicklow County Council.
<b>Planning Authority VSL Reg. Ref.</b>	VS/B/09.
<b>Site Owner</b>	IDV Developments Limited (Button Works Real Estate Limited).
<b>Planning Authority Decision</b>	Place site on register.
<b>Date of Site Visit</b>	8 September 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 Wicklow County Council, stating their intention to enter a site measuring 0.44ha, located at Bray Head Hotel, Strand Road, Bray, Co. 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 subject site, which has a stated area of 0.44 hectares and is roughly square in shape and is located towards the southern end of Strand Road, Bray, Co. Wicklow. Bray Head Hotel, a Protected Structure, is located within the site. This hotel is presently closed, is dilapidated and in need of upgrade and refurbishment. To the south east of the site is Fontenoy Terrace, a fine terrace of two storey homes. To the north west of the site is a large area of a pay for use surface car park associated with the Star Leisure Complex. The Dublin-Wexford/DART railway line is also located to the south west of the site.
- 2.2. The site lies behind construction hoarding and a large amount of site clearance work is currently being carried out on the site. On site ancillary structures have been dismantled and steep ground to the rear of the site has been graded back, though the former hotel buildings remain in a state of complete dilapidation.

## **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) of the Act. The Notice is dated 20 October 2021 and is accompanied by a map outlining the extent of the site to which the Notice relates.

## **4.0 Development Plan Policy**

### **4.1. Wicklow County Development Plan 2016-2022**

The current County Development Plan refers to 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 standalone 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 Bray and Environs, the following zones are included: TC, SF, GTH.

**Wicklow County Development Plan 2022 – 2028** - At the County Council meeting of 12 September 2022 the Elected Members of Wicklow County Council resolved to make the Wicklow County Development Plan 2022 - 2028. This Plan will come into effect on the 23 October 2022.

#### 4.2. **Bray Municipal District Local Area Plan 2018 – 2024**

The site is zoned SF, Bray Seafront with a stated objective – 'To provide for the development and improvement of appropriate seafront uses.' and described so as 'To protect and enhance the character of the seafront area and to provide for mixed-use development including appropriate tourism, retail, leisure, civic and residential uses. The Seafront area shall be promoted as the primary tourist, recreational and leisure centre of Bray.'

## 5.0 Planning History

### 5.1. Subject site:

PA ref 18936 – Permission for Partial demolition, refurbishment and reconfiguration of hotel including refurbishment and alterations to front facade, removal of signage, construction of 4th floor (5th storey) penthouse, construction of 5 storey over podium residential block to rear to provide for mixed use residential and commercial development with 46 car parking spaces and 114 cycle parking spaces.

Development includes work to a Protected Structure. May 2019.

### 5.2. Adjacent site:

PA ref 17/359 and ABP ref PL27.248754. Permission for 106 apartments, 5 commercial units, car parking, childcare facility, demolition of residential buildings to rear of site, landscaping, boundary treatments and services. November 2017.

## 6.0 Planning Authority Decision

### 6.1. Register of Vacant Sites Report:

6.1.1. Report 1 - Site is zoned 'SF – Seafront' and must be assessed as regeneration lands. Planning history outlined, permission for redevelopment 18/936 refers. Site inspections took place on 8 February 2019, 25 January 2020 and 3 June 2021, hotel is closed and has been for years, the highly visible building is vacant and in a neglected condition. A considerable amount of public investment in the general area has been expended. The site is vacant, it affects the character of the area due to its neglected condition and the presence of antisocial behaviour. The site accords with section 5(1)(b) of the 2015 Act, issue section 7(1) Notice. The report includes a photographic survey and map.

6.1.2. Report 2 – Report date 15 October 2021 and reinspected on the 13 October 2021. The report acknowledges the submission made by the owner in relation to the section 7(1) Notice. The period of site surveys and vacancy is explained, at least 41 months has elapsed between inspections and notice issue. Covid provisions have been accounted for. The process of seeking planning permission or engagement with potential purchasers is not considered to be a use for the site. Place site on the register is recommended.

## **6.2. Planning Authority Notices**

- 6.2.1. A section 7(3) Notice issued on the 20 October 2021 referencing sections 5(1)(b) and 6(6) of the Act, advising the owner that their site had been placed on the register, accompanied by a site map. The Notice was sent to the Secretary and Directors of IDV Developments Ltd.
- 6.2.2. A section 7(1) Notice issued on the 5 July 2021, 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 sections 5(1)(b) and 5(2) 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 Wicklow County Council to enter the subject site on the Register. The grounds of the appeal can be summarised as follows:

- The lands are not vacant, though the site is unused at present.
- The buildings on site are not neglected or in a ruinous condition. A property management company maintains a weekly maintenance schedule, that includes wear and tear repairs and litter pickups. The building on site has been painted, hoarding maintained, and vegetation controlled.
- Antisocial behaviour is not taking place on the site. The lands are secured and monitored by 24/7 video surveillance.
- The site never provided housing in the first place and so there has been no reduction in the number of residential units in the area.

### **7.2. Planning Authority Response**

- 7.2.1. All relevant information on the appeal is contained in the reports and photographs already submitted.

### **7.3. Further Response**

The appellant states that the site has changed ownership from IDV Developments Ltd to Button Works Real Estate Limited.

## **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 20 October 2021.
- 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 and the planning authority took into account. 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 placement of the site on the Register, which I outline in section 6.1 above, refers to the tests included for regeneration lands 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 SF – Seafront land use zoning where the objective is to: ‘provide for the development and improvement of appropriate seafront uses.’, this SF zoning is identified by Chapter 4 of the operative plan as lands that can be considered as regeneration for the purposes of the levy.
- 8.1.3. The main concerns of the appellant are that the site though not in use cannot be classed as a vacant site as defined by the 2015 Act. This is because the buildings are not in a ruinous or neglected condition, no antisocial behaviour is taking place and there has not been a reduction in habitable buildings. In addition, the appellant maintains that the site does not adversely affect the character of the area, or the amenities provided therein. The planning authority confirm their contention that the site is a vacant site within the terms of the 2015 Act.

### **8.2. Site context**

- 8.2.1. The site comprises the former Bray Head Hotel, a protected structure listed in the development plan. Permission has been secured for its redevelopment, but this had not yet taken place at the date of the appeal. The planning authority’s photographic record of the site is extensive and clearly shows that the hotel has not operated for

some time. Even taking into account any Covid restrictions, the site has not operated as a hotel and has been hoarded off for some time. The conclusion reached by the planning authority, is that the site is vacant within the simple meaning of the term. A number of public realm improvements have been carried out by the planning authority in recent years, improving the amenity and accessibility of the seafront at this location. The redevelopment of this site and the adjacent site have been granted permission, ownership has altered, but works to clear the site have only begun since the appeal was lodged.

### 8.3. Vacant or Idle?

8.3.1. 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.*

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

8.3.3. Vacant or Idle – The appellant admits that the site has not operated or been in use as a hotel but highlights that it has been regularly and routinely maintained and this is offered as a use for the particular site in question. The planning authority state that lack of a use is just one of the reasons for inclusion on the register.

8.3.4. The surveys conducted by the planning authority clearly show the poor condition of buildings on the site over the years. On the day of my site visit I observed that the hotel building has deteriorated further into dilapidation, but that ground works were underway, in and around the site. 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 appellant has not stated a physical use for the site but claims that the temporal action of maintenance and surveillance of the site should be considered to constitute a singular use for the lands.



8.3.5. In my mind, the Act's references to development and use depends upon a close relationship with the meaning of these words in the Planning and Development Act 2000 (as amended). Consequently, the definitions of 'development' and 'use' are helpful and serve to illustrate how a site should be assessed in terms of the vacant or idle status. I am not satisfied that the act of routine maintenance of buildings and structures on the lands to be an actual use for the site. The appellant's case that the site is not vacant or idle because of the exercise of routine maintenance cannot be considered as a meaningful use for the site so as to remove it from the register. It is, in my mind a consequence of land ownership that the upkeep, security and routine maintenance falls to be carried out by any responsible owner. It cannot therefore be considered to be a use for the site as in the ordinary meaning of the term. I am satisfied that for the relevant period the site was vacant, had no defined use and should be considered for placement on the register.

8.3.6. For the purposes of Section 5(1)(b)(i) 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 were vacant or idle for the period concerned. The site as demarcated by the planning authority meets this definition subject to the criteria outlined by section 5(1)(b) and 6(6) of the 2015 Act. The site has been defined by the planning authority and if circumstances change and development progresses on the site, 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.*

8.3.7. Adverse Effects – The appellant states that the site is not neglected, it is behind construction hoarding and a programme of regular maintenance of the buildings on site takes place on a weekly basis. Antisocial behaviour does not take place on site thanks to 24/7 video surveillance and regular litter collection is carried out. 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 that adversely impacts the character of the area and the presence of litter and graffiti as factors that indicate antisocial behaviour is or was taking place.

8.3.8. 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), such as 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 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.*

8.3.9. 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).

8.3.10. Firstly, the planning authority note the condition of the site, its neglected appearance and the existence of litter and graffiti and the impact it is having on the amenities and character of the area. The planning authority point out that the public realm has been improved in recent times at some cost to the Council. I note that the site is clearly visible from a number of viewpoints and the existence of construction hoarding, no matter how well maintained, fails to completely screen this large site. The dilapidated condition of the buildings on the site cannot easily be ignored and has and is affecting the overall character of the area. Whilst the buildings on site may not be entirely ruinous they are neglected, and the condition of the site cannot and could not be compared favourably with other sites in the vicinity. The wider area is characterised by a number of elements: the high-quality public realm along the seafront, well maintained terraced houses and a large surface car park. It is because of the vacant nature of the subject site and its relatively neglected appearance, when compared with other property in the area, that I am satisfied that the site is and has been neglected in line with the criteria set out in Section 6(6)(a) of the 2015 Act.

- 8.3.11. The second matter 6(6)(b) refers to anti-social behaviour which was or is taking place in the area. The planning authority's photographic surveys show a combination of litter and graffiti and this provides the basis for concluding that antisocial behaviour probably was and is taking place. I consider that the site would meet this test.
- 8.3.12. In terms of a reduction in the number of habitable houses, or the number of people living, in the area. I find that there is no hard evidence either way to suggest that there has been a reduction in the number of habitable houses, or the number of people living, in the area.
- 8.3.13. Because the Act includes commas and an 'or' between (a), (b) or (c), only one criteria is required to be met. In conclusion, I consider that two of the tests in Section 6(6) are met and that the site has adverse effects on the character of the area and that antisocial behaviour was or is taking place, so thus can be categorised as a vacant site as defined by Section 5(1)(b)(ii). In addition, I am satisfied that the neglected condition of these vacant lands has an adverse effect on existing amenities and 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, particularly due to the strategic location of the lands along Bray seafront and its proximity to physical and social infrastructure.

#### **8.4. Procedural Matters**

- 8.4.1. I note that correspondence received by the Board, dated 9 December 2021, states that ownership has now changed to Button Works Real Estate Limited. I do not envisage that this impacts upon the Board's role in determining the appeal on hand.

#### **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 site (VS/B/09), was a vacant site for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 20 October 2021 shall remain.

#### **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 site, or the majority of the site, was and is vacant or idle and the fact that the existing structure on site was and is neglected and has attracted antisocial behaviour, as evidenced by graffiti, and, therefore, that the majority of the site has adverse effects on the character of the area,

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

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Stephen Rhys Thomas  
Senior Planning Inspector

September 2022