



An
Bord
Pleanála

Inspector's Report ABP-312488-22

Type of Appeal	Section 9 Appeal against section 7(3) Notice.
Location	Lands measuring 0.52ha located at Bray Seafront Carpark (former Dawson's Amusement site), Strand Road, Bray, Co. Wicklow.
Planning Authority	Wicklow County Council.
Planning Authority VSL Reg. Ref.	VS/B/10.
Site Owner	Lauro Enterprises Limited.
Planning Authority Decision	Place site on register.
Date of Site Visit	7 September 2022.
Inspector	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 0.52ha located at Bray Seafront Carpark (former Dawson's Amusement site), 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 0.52 hectares, is roughly square in shape and is located towards the southern end of Strand Road, Bray, Co. Wicklow. The site comprises a well maintained surface car park, entered from the public road by an automatic barrier. The former Bray Head Hotel is located to the south east and the Star Leisure complex is located to the north of the site.

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 8 December 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 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.

PA ref 12/630002 - Demolition of the 'Dawson's Amusement building, adjacent former restaurant, former shop, derelict residential buildings and associated structures, relocation of existing vehicular access, and a temporary planning permission for five (5) years for a surface carpark (accommodating 134 No. spaces, including 7 No. accessible spaces and 50 No. bicycle stands) and for use as a venue for occasional outdoor amusement, carnival and festival space on a hard landscaped surface, with perimeter bollards, lighting and associated site works. October 2012

Condition 15 – This permission shall be for a period of five years.

Reason: In order to further assess the visual, traffic safety and other consequences of the development in the interests of proper planning and development and in light of changing circumstances.

5.2. Adjacent 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.

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 17/359 and a car park 12/630002 refer. Though the site is well maintained in some areas the site shows neglect such as the retaining walls to the rear. Site inspections took place on 25 April 2018, 8 February 2019, 25 January 2020. 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 23 June 2021 and reinspected on the 3 June 2021. The submission received is responded to and the meaning of ‘owner’ explained. The site remains vacant and neglected. Placement of site on the register is recommended.

6.2. Planning Authority Notices

- 6.2.1. A section 7(3) Notice issued on the 8 December 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.
- 6.2.2. A section 7(1) Notice issued on the 6 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 6(6) 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 place the subject site on the Register. The grounds of the appeal can be summarised as follows:

- The notice was issued during a period when the process of ownership (title) was being progressed. This process continues and the imposition of placement on the register could place a pause to development of the site.

Not Vacant or Idle

- The site is neither vacant or idle, it is an operating surface car park incidental to the Star Leisure facility it adjoins. Case law is used to illustrate that any use incidental to a principal use, forms part of that use, *Rehabilitation Institute v Dublin Corporation*. This is such a case where the car park provides parking for staff and patrons of Star Leisure. The site may have been idle for the twelve months concerned as a result of Covid restrictions.

The section 7(1) notice (dated 6 July 2021) was issued during a time when pandemic restrictions applied and at the request of the planning authority the car park was opened to during May 2021 to ease traffic issues along the seafront.

For 8 months and 21 days during 2021, the Star Leisure facility was forced to close due to Covid restrictions, but the car park opened to facilitate the Council's wishes.

The car park cannot be considered to unauthorised development (section 6(7) of the 2015 Act refers), as it forms an ancillary part of the main use (Star Leisure), dicta from *Rehabilitation Institute v Dublin Corporation* is quoted. In addition, any use carried out on behalf of a Local Authority is exempted development, section 4(1) of the Planning and Development Act 2000 refers. The use of the car park during the period concerned was for the public and at the request of the Council.

- The site has planning permission for redevelopment and it is intended that this will be carried out in full by the time of its expiry, PL27.248754 refers.

Adverse Effects (section 6(6) of the 2015)

- The planning authority state that the site, due to its neglected appearance has an adverse impact upon the amenities and character of the area. But after correspondence from the owners no advice was provide as to how to address the matters.
- The car park is in good condition, regularly maintained by the owners and the result of significant investment (€1 million). Commercial rates have been paid in relation to the car park and ongoing engagement with the Rates Office in relation to reductions has taken place.
- ABP ref VV29E.VV0029 is highlighted as such a case where a site did not meet the requirements of section 6(6) and the subject site is similar.

The appeal is accompanied detailed and copious appendices to support the grounds of appeal

7.2. Planning Authority Response

- 7.2.1. All relevant information on the appeal is contained in the reports and photographs already submitted.
- 7.2.2. The Council's Law Agent confirms that Lauro Enterprises Ltd fulfils the definition of site owner as outlined by the 2015 Act (memo attached).

- 7.2.3. The site is considered to be a standalone site (apart from Star Leisure), the site has a separate permission for a car park and permission for redevelopment.
- 7.2.4. The permission for the site as a car park has now lapsed and the use as a car park is an unauthorised use.
- 7.2.5. The car park was not constructed at the behest of the planning authority and therefore cannot be considered to be exempted development under section 4(1) of the 2000 Act. Engagement with officials of the Council in terms of the use of the car park during the period concerned is unfortunate but does not negate the fact that the car park is unauthorised.
- 7.2.6. Covid restrictions aside, the car park has been vacant since at least 2018 and probably 2017, when permission lapsed, survey photographs from 2018 demonstrate this.

7.3. Further Response

- 7.3.1. The appellant has responded to the planning authority's submission and reiterates matters previously outlined in the grounds of appeal, in particular it is stated that:
- There has never been uncertainty about the ownership of the site.
 - Disagreement about the standalone nature of the site, the car park is an ancillary use associated with Star Leisure, its staff, patrons and occasional carnivals. Star Amusements and Leisure Limited and Lauro Enterprises Limited are related companies and jointly developed the car park/ carnival/festive space and manage same.
 - Permission for the car park has lapsed, but the site continues to be maintained, insured and subject to commercial rates.
 - At all times that the Council surveyed the site it was actually in full use; 2018, 2019, 2020 and 2021. For instance, in April 2018 the site was in use as a 'Fun Zone', as per permission reference 12/2 and for nearly 6 months of the year until Covid restrictions took place. The site has also been used by media companies (invoices enclosed). The image of a broken telephone box lies outside the site. Photographs from June 2021 to December 2021 should be disregarded as they fell at a time of national lockdown restrictions.

- Since Covid restrictions have eased, note the photograph of an active car park March 2022, submitted with this submission.
- Retaining walls on site are in good condition.
- The existence of a mobile home in one image taken by the planning authority illustrates the varied use of the site for which there is a permission.
- The period of national lockdown should not form part of the previous twelve months of the relevant period.
- As per *Navratil v An Bord Pleanála*, the proper interpretation of vacant (empty or unoccupied) and idle (not in use) should defeat the placement of the site on the register.

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 8 December 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 in their decision to place the site on the register. 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 has been in full use as a car park and an events space since permission was granted. Furthermore, the site is in good condition, it is regularly maintained and does not adversely affect the character or amenities of the area. The site has permission for redevelopment, and it is hoped by the appellant that this will take place soon. The planning authority confirm their contention that the site is a vacant site within the terms of the 2015 Act and argue many of the points made by the appellant.

8.2. Site context

- 8.2.1. The site comprises a private surface car park that requires entry and exit through a barrier, payment for use is obtained at the adjoining Star Leisure complex. The car park is well maintained and the large retaining wall at the rear of the site is of exposed mass concrete construction. Permission has been secured for the redevelopment of the site but this had not yet taken place at the date of the appeal or by the date of my site visit. The planning authority's photographic record of the site is extensive and shows that the car park has experienced a low intensity of use. 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 planning authority claim that the use as a car park is unauthorised and cannot be taken into consideration, the site is vacant and the neglected appearance of the site adversely affects the character and amenities of the area.

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 points to case law in terms of what is meant by vacant and/or idle and states that the site is neither. It is an operating car park for the patrons and staff of Star Leisure. Though use during Covid restrictions was minimal, the car park was used by the Council to ease local traffic issues during Covid measures lockdown. In addition, and in accordance with the permission for carnival and use by media companies have taken place on the site on various occasions. The planning authority refute the case made about the use of the car park by the owner and state that the car park has been vacant since at least 2017/2018 and any later use of the car park is unauthorised.
- 8.3.4. There are a number of detailed strands to the appellant's grounds of appeal with respect to whether the site was vacant or idle for the relevant period. Equally, the planning authority have responded and maintain their position that the site was vacant and furthermore that any use of the lands for car parking is unauthorised. Much is made by the appellant of commercial rates paid on the site and that the car park was actually used by the Council to ease traffic problems during government pandemic restrictions.
- 8.3.5. In the first instance I am satisfied that the surface car park was constructed on foot of a planning permission, PA ref 12/630002 refers. Condition 15 of that permission restricts the use of the site to a period of five years. Both parties concede that the permission has expired but opinion differs as to the legitimacy of the lands to be used as a car park at all now. The 2015 Act spells out exactly what is meant by unauthorised development/use in the context of a vacant site, section 6(7) refers:
- In determining for the purposes of this Part whether a site was vacant or idle for the duration of the 12 months concerned a planning authority, or the Board on appeal, shall not have regard to any unauthorised development or unauthorised use.*
- 8.3.6. The appellant discusses exempted development in the context of local authority development, but the planning authority dispute this. I see no merit in pursuing this argument because the car park development in question is governed by a planning permission with a clear and unambiguous condition that curtails the use of the site beyond five years. On the face of it, it would seem that the use of the car park is unauthorised, if used beyond the expiration of the permission. The planning authority

have not produced any documentation to show that enforcement action has been taken or indeed concluded in relation to the car parking use. However, in this instance I am not convinced that any such enforcement action is necessary, given that the car parking and other uses are in breach of a condition of a permission granted under Part III of the PDA Act 2000 (as amended). As a use that is in breach of a permission, such a use is therefore unauthorised. Any development that requires planning permission or a development which is in breach of the conditions of its planning permission is classed as 'unauthorised development'.

- 8.3.7. The 2015 Act states that the planning authority/Board shall not have regard to any unauthorised development or unauthorised use. I am therefore satisfied that section 6(7) of the 2015 Act can apply in this instance.
- 8.3.8. The appellant has produced a variety of material to demonstrate that the car park was in use, as either car parking or festivals/carnivals. Dates of invoices and payments made for commercial rates/insurance cover the relevant period, though site photographs provided by the appellant appear earlier. The planning authority's own photographs of the site show sporadic use of the car park, but in most cases, cars are parked on site. Even during pandemic restrictions, cars appear to occupy the site and both parties admit that the site was used to help ease traffic issues during pandemic lockdowns.
- 8.3.9. At the time of my site visit, I observed that the car park was occupied by six vehicles and that the on-street spaces along the seafront were also at low occupancy. I agree with the appellant's contention that the car park was and is in use as a car park during the relevant period, before and after. However, that use is an unauthorised use as a development which is in breach of the conditions of its planning permission. In my mind the matter of any unauthorised use (section 6(7) of the 2015 Act) comes into play and the Board should not have regard to such unauthorised use. I am satisfied that the site was vacant or idle during the relevant period.
- 8.3.10. Adverse Effects – Given, that I am satisfied that the site is vacant or idle, the matter of adverse effects has relevance. 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 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.

8.3.11. 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) of the 2015 Act.

8.3.12. Firstly, the planning authority note the condition of the retaining walls to the rear of the site as being unsightly. The appellant states that the site is not neglected, it is regularly maintained and in good condition. I agree, the car park is well constructed with clear and well marked out car parking spaces. Barriers and bollards are all in good condition. A large retaining wall characterises the rear of the site, it is of exposed massed concrete construction, but it is neither ruinous or neglected. I am satisfied that the appearance of the car park was and is neat and in keeping with the existing public parking facilities immediately adjacent. The site does not detract from the amenities or character of the area.

8.3.13. I did not detect any litter or graffiti on the site and this does not form part of any factors mentioned by the planning authority.

- 8.3.14. 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.
- 8.3.15. 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 none of the tests in Section 6(6) are met and that site being vacant or idle does not have adverse effects on the character of the area and thus cannot be categorised as a vacant site as defined by Section 5(1)(b). I am satisfied that the site does not fall into any of the criteria outlined by section 6(6) of the 2015 Act. Even though the site is a vacant site, purely because no regard can be had to an unauthorised use, the site being vacant or idle has no 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 and has no adverse effects on the character of the area. The site is not a vacant site in terms of the 2015 Act.

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 give written notice to the planning authority that states the site should not stand on the register in respect of the lands of 0.52ha located at Bray Seafront Carpark (former Dawson's Amusement site), Strand Road, Bray, Co. Wicklow, as the site was not a vacant site. Therefore, the entry on the Vacant Sites Register on the 8 December 2021 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 ongoing use of the site as a car park, but that such use shall be disregarded as an unauthorised use and thus the site is vacant or idle,

however, the site being vacant or idle has no 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 no adverse affects on the character of the area, because the site is not neglect or ruinous, antisocial behaviour is or was not taking place and there is no evidence to suggest that 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,

the Board considered that it is appropriate that a notice be issued to the planning authority to remove the site from the Vacant Sites Register.

Stephen Rhys Thomas
Senior Planning Inspector

September 2022