



An
Bord
Pleanála

Inspector's Report VV0022

Type of Appeal	Section 9 Appeal against section 7(3) Notice.
Location	Lands at North of Outer Ring Road, Kilbarry, Co Waterford.
Planning Authority	Waterford City and County Council.
Planning Authority VSL Reg. Ref.	51.2.
Site Owner	Noel Frisby Construction Ltd.
Date of Site Visit	14 December 2017.
Inspector	Stephen Rhys Thomas.

1.0 Introduction

- 1.1. This appeal refers to a section 7(3) notice issued by Waterford City and County Council, stating their intention to enter the site at Lands to North of Outer Ring Road, Kilbarry, Co Waterford 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 is located off the R710 (Outer Ring Road) on the southern outskirts of Waterford City. The site comprises the southern portion of a large agricultural field with no means of vehicular access. A number of business parks and a retail park are located in the vicinity. Foxwood housing estate (still under construction) is located to the north of the site.
- 2.2. The boundaries of the site comprise mature hedgerows except for the northern boundary which is undefined. The site interior is broadly level and is in use as an arable field. Agricultural spraying machinery and a tanker trailer were present on the site.

3.0 Planning Authority Decision

- 3.1. **Planning Authority Notice:** Waterford City and County Council advised the site owner that the subject site (Planning Authority site ref. 51.2) had been identified as a vacant site. The notice, issued in pursuant to section 7 of the Act and dated 27th July 2017, stated that particulars of the site have been entered on the Vacant Sites Register. The notice was accompanied by a map outlining the site boundary.
- 3.2. **Register of Vacant Sites Report:** Site is zoned 'Mixed Use', the site is identified as a regeneration. There is a roads objective for the area. The planning history of the site is outlined – permission for a 40 bedroom hospital 04/5000198. The site is suitable for inclusion on the VSR. The report is accompanied by a location map. The report includes a detailed criteria to be assessed for suitability for the VSR and comprises the following:
 - The site is a regeneration site and has been vacant/idle for previous 12 months.

- The site accords with section 5(1)(b) of the 2015 Act, and is having an adverse impact on the existing amenities of the area.
- The site accords with section 6(6) of the 2015, insofar as the site is in a ruinous/neglected state and has an adverse impact on the character of the area.

4.0 Development Plan / Planning History

4.1. The **Waterford City Development Plan 2013 – 2019** is the operative development plan. The site is located on lands that are subject to zoning objective 'Mixed Use'. A Roads Objective passes through the site.

Table 2.5 outlines the housing yield from mixed use zoned land at Kilbarry South as nil.

Section 7.2 sets out the neighbourhood strategy for various parts of Waterford City including section 7.3.2 Ballybeg/Kilbarry. Policies include:

- To ensure that the growth of the city takes place in an orderly manner that is sustainable in terms of integrated land use, transportation and provision of infrastructure. (POL 7.2.1)
- To implement the Neighbourhood Strategy in order to provide for the development of sustainable neighbourhoods, focused on neighbourhood/district centres with a mix of uses, densities, community facilities and neighbourhood centre uses. (POL 7.2.2)
- To retain, protect and improve the environmental qualities of the existing suburban areas; to reinforce their neighbourhood/district centres and to provide for additional community youth and public services, amenities and facilities as identified in this Plan. (POL 7.2.3)

Section 2.6a Urban Regeneration, states:

The Urban Regeneration and Housing Act 2015 introduced a vacant site levy in order to incentivise the development of vacant sites in urban areas for housing and regeneration purposes. The application of the levy is intended to bring underutilised and vacant sites and buildings in urban areas into beneficial use.

Waterford City & County Council will examine lands within the City, as appropriate, for the purposes as set out in the Urban Regeneration and Housing Act 2015, in relation to the vacant site levy.

It is an objective of this Plan to promote the appropriate development and renewal of urban sites and areas, identified having regard to the core strategy, that are in need of regeneration, in order to ensure there is no -

- (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) shortage of habitable houses or of land suitable for residential use or a mixture of residential and other uses.

4.2. **Planning History**

PA reference **04/5000198**, **ABP reference PL31.208449**. Permission for 40 bed hospital. December 2004.

5.0 **The Appeal**

5.1. **Grounds of Appeal**

5.1.1. The landowner has submitted an appeal to the Board, against the decision of Waterford City and County Council to enter the subject site on the register. The grounds of the appeal can be summarised as follows:

- The appellant states that they have recently acquired the lands (2016), this is supported by a memorandum of agreement. The site cannot be considered as land hoarding. A draft masterplan has been devised in conjunction with the Local Infrastructure Housing Activation Fund (LIHAF) for link roads in the wider area. A housing scheme has been applied for in the vicinity and the appellant was not aware that the subject lands are zoned mixed use.
- Despite the landlocked nature of the site, the appellant is willing to transfer lands free of charge to accommodate the distributor road. In addition, there is an intention to construct 140 houses on the subject lands in due course.

- The appellant finds it hard to understand why this site was isolated from the larger landholding for which a masterplan was devised in little over a year.
- In terms of regeneration land, the site does not meet the following criteria: the site is not ruinous or neglected, it is farmed land; the site does not represent urban blight or decay and there is no anti-social behaviour present; the site is not giving rise to a shortage of houses in the area, Magna Construction are building 50 houses at a site adjacent to Foxwood; and there is no shortage of commercial floorspace in the vicinity.
- The appellant disputes the methodology for placing the lands on the Register and points out that the site is lacking infrastructure such as roads.
- The inclusion of the site on the VSR will not expedite the delivery of houses. The appellant is actively delivering houses relative to demand.

The appeal is supported by the following: an extract from the Council's assessment of Site 51 for inclusion on the VSR, a correspondence from Purcell Properties on the state of the commercial floorspace market in Waterford, numerous adverts concerning the availability of commercial floorspace, a memorandum of agreement concerning sale of land, land use zoning map extract, sales literature, aerial photograph, preliminary sketch prepared by Waterford City and County Council with regard to LIHAF funding of roads in Kilbarry and a masterplan for Kilbarry drawn up by Fewer Harrington Architects 2016.

5.2. Planning Authority Response

5.2.1. The Planning Authority responded to the appeal, requesting that the following observations be noted by the Board:

- The site is zoned mixed use in the current Waterford City Development Plan 2013-2019, and allows for residential uses amongst other things. The appeal site is part of a much larger landholding in multiple ownership that is subject to mixed use zoning. Other sites in the vicinity have been entered onto the VSR.
- The underlying methodology for site selection has been forwarded to ABP and the planning authority will accept any determination with regard to the site and VSR.

6.0 Assessment

- 6.1. An appeal under section 9 of the Act, requires that the burden of showing that the site or a majority of the site was not vacant or idle 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 vacant or idle 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 Waterford City and Council VSR on the 27th July 2017.
- 6.2. The subject site is located in an area zoned mixed use in the current City Development Plan. Section 2.6a of the Plan states that the vacant site levy applies to lands zoned in urban areas for housing and regeneration purposes. The site is considered regeneration lands for the purposes of the 2015 Act.
- 6.3. The appellant states that a masterplan has been devised for the wider area. In addition, LIHAF funding has been secured for a road in the area. The appellant is willing to transfer land without charge for the road and plans to construct 140 houses on the site in due course. In addition, the appellant points out that there are no amenities or services such as roads in the area for the site (landlocked farmland) to impact upon. Therefore, the site does not meet the requirements for regeneration land.
- 6.4. Taking each of the appellant's points in turn. The Act is supported by Circular Letter PL7/2016 that outlines key definitions and practical matters to consider in the identification of vacant sites. The planning authority have determined that the site is regeneration for the purposes of the VSR. In this context, I note that Appendix 1 of the circular sets out key definitions and supporting criteria, as follows:

Vacant site on "regeneration land"

In the case of regeneration land, section 5(1)(b) provides that a site shall be considered a vacant site if it satisfies the following criteria:

(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.”.

A site being deemed to have adverse effects on amenities or reducing the amenity or character of the area shall be determined by reference to (section 6(6)):

(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.

In effect, a vacant site on residential land or regeneration land should meet all of the initial relevant criteria in section 5, further supported by the criteria for determination of certain factors set out in section 6. These focused and detailed definitions and supporting criteria provide a clear evidence basis for identifying vacant sites which strengthens the legislative provisions and clarifies the justification for the application of the levy for such sites.

- 6.5. To start, I consider the site vacant, even though it is in use for agricultural purposes, para 6.8 of my report refers. Secondly, I must identify if the site has adverse effects on existing amenity, reduces amenity of existing public infrastructure (such as open spaces, roads, sewers, public transport facilities, telecommunications, school sites etc) or adverse effects on the character of the area. Given that the site is a landlocked agricultural field, there is very little in the way of existing public infrastructure in the immediate vicinity. However, it is apparent that there is existing public infrastructure in the wider area. Consequently, the next step is to assess if the site being vacant/idle is having an adverse effect on such amenities or the character of the area, section 6(6) of the Act refers. The site is not ruinous or in a neglected condition, antisocial behaviour is not taking place and according to the planning authority there has not been a reduction in the number of habitable houses or people living in the area as a result of the vacant site. In my view, none of the matters

referred to above were affected by the existence of the vacant or idle land. Given the foregoing, the site should not be added to the register.

- 6.6. With specific reference to the provision of a road through the site, I refer to Appendix 3 of the circular, that states:

It should be noted that local authority owned sites which have been identified for the provision of education facilities by both the Department of Education and Skills and the local authority, or identified by the local authority as reservations for capital works (such as for the provision of roads) should not be subject to the levy. In such cases, the provision of reservations for capital works in a local authority functional area must be reflected in the development plan objectives.

- 6.7. In this respect, it seems clear that a portion of the site is subject to a Roads Objective detailed on Map A – City Extant of the Waterford City Development Plan. I also note a preliminary layout sketch prepared by Waterford City and County Council for LIHAF Kilbarry and submitted by the appellant. The road alignment follows the northern portion of the appeal site. The circular does not suggest what extent a reservation should extend with respect to capital works. However, given that the site accommodates a Development Plan Roads Objective, it would seem reasonable to include the entire site. The site should not therefore be placed on the register.

- 6.8. With reference to agricultural lands, Appendix 3, states:

‘Sites may be in areas where the land is zoned for a particular purpose, e.g. residential. However, pending development appropriate to its zoning, the land may currently or on an interim basis have an agricultural use. Given the purpose of the levy, particularly in the context of the provision of housing, in such cases the levy may be applied, as the site concerned is not being used for the purpose for which it was zoned.’

Firstly, the site is zoned for a particular purpose, in this case mixed use. The circular cites ‘residential’ as an example, however other suitably zoned uses could be considered. I accept the site has an ongoing agricultural use. The site is not being used for the purpose for which it is zoned and therefore the levy could be applied in this case. However, given the foregoing the site fails to meet other requirements of the Act concerning regeneration sites.

7.0 Recommendation

7.1. The site is zoned mixed use and is identified in the City Development Plan as land suitable for regeneration. Given the foregoing, the majority of the site is not vacant or idle in the context of the Act, for the following reasons:

- The site fails to meet the criteria for 'regeneration land' as stated in section 5(1)(b) and further elaborated upon by section 6(6) of the Urban and Regeneration and Housing Act 2015.
- The site contains a roads objective identified in the development plan and according to Appendix 3 of Circular Letter PL7/2016 should not be subject to the levy.

I recommend that the Board should determine that the site to the north of the Outer Ring Road, Kilbarry, Waterford was not vacant or idle for the duration of the 12 months preceding the date of entry on the Vacant Sites Register on the 27th July 2017. Therefore, the entry on the Register should not be confirmed.

8.0 Reasons and Considerations

8.1. Having regard to

- (a) The evidence placed before the Board by the Planning Authority in relation to the condition and use of the site over the relevant period,
- (b) The evidence in the appellant's submission,
- (c) The report of the Planning Inspector,
- (d) The site fails to meet the criteria for 'regeneration land' as stated in section 5(1)(b) and further elaborated upon by section 6(6) of the Urban and Regeneration and Housing Act 2015, and
- (e) The site contains a roads objective identified in the Waterford City Development Plan 2013 – 2019

the Board is satisfied that the site was not vacant or idle for the relevant period.

Stephen Rhys Thomas
Planning Inspector

20 February 2018