



An
Bord
Pleanála

Inspector's Report VV0024

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| Type of Appeal | Section 9 Appeal against section 7(3) Notice. |
| Location | Lands at Cork Road, Kilbarry, Co Waterford. |
| Planning Authority | Waterford City and County Council. |
| Planning Authority VSL Reg. Ref. | 7.1. |
| 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 at Cork 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 along the old Kilbarry Road, a short loop road spur off the Cork Road, south west of Waterford city centre. The northern portion of the site lies adjacent to the Cork Road to the north. The entire site has recently been levelled and worked by earth work machines, drainage channels have been cleaned and regraded. The Johns River flows around the northern and eastern boundary of the site and its banks have been graded back and the channel cleared.
- 2.2. A large area of open space is located to the immediate west of the site and a lesser portion to the south. Buildings appear to have been removed from the southern section of the site, but gate piers and flanking walls remain with small amounts of graffiti present.

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. 7.1) had been identified as a vacant site. The notice, issued 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 'Opportunity Site', and is identified as Regeneration with a potential yield of 12 housing units. The planning history of the site is outlined, mixed used development refused PA ref. 03/500552. The site is suitable for inclusion on the VSR. The report is accompanied by a location map. The report includes a detailed site suitability assessment for inclusion on 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.
- The site accords with regeneration sites outlined in section 6(6) of the 2015 Act, insofar as the site is in a ruinous neglected condition and antisocial behaviour was/is taking place.

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 'Opportunity Sites'. A portion of the site is located in Flood Zones A and B.

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 **03/500552**. Permission refused for mixed use retail/residential scheme (144 apartment units). November 2003.

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 disputes the methodology for placing sites on the register, it takes no account of market demand for commercial/industrial floorspace.
- The appellant highlights that for a site to be included on the register it must be vacant/idle and have adverse effects on existing amenities, in accordance with Section 5(b) of the 2015 Act. The site is not in a ruinous/neglected condition as any buildings have been removed. No antisocial behaviour is taking place. There is adequate zoned land in the Development Plan to accommodate residential units, to the point that the delivery of units must be phased.

- Given the historic connections of this area as the former city dump, it is very hard for any landowner to develop sites. A masterplan should be written for the entire area around the Kilbarry Eco Park.
- The appellant fears that a planning application would be refused on the basis of being premature pending the delivery of an overall plan for the area, inadequacy of the Lacken Road and absence of gravity main drainage.
- The appellant states that in addition to the appeal site they also own site ref 7.2 nearby, thus facilitating comprehensive development of the area. It is noted that other large sites in the area: former Value Centre (in Waterford Council's ownership), Moloney's Yard are not included on the register.
- The appellant has carried out a survey of commercial/retail floorspace demand in Waterford, of which there is no demand.

The appeal is supported by the following: a correspondence from Purcell Properties Ltd outlining current market demand for commercial property, numerous adverts concerning the availability of commercial floorspace, land use zoning map extract, and an aerial photograph of the sites in the appellant's ownership.

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 substantive matters raised by the appellant were raised previously on foot of the Section 7(1) Notice, the planning authority will accept any determination with regard to the site and VSR.
- The site is zoned 'Opportunity Site' in the current Waterford City Development Plan 2013-2019, whilst focused on mixed use and residential uses it allows low impact industrial development.
- Contrary to the stated grounds of appeal, the former Value Centre (ref 7.4) is included on the VSR and the Council owned site is in operation as the Kilbarry Civic Amenity Site and is not therefore vacant or idle.
- Reference is made to the site selection process that has already been forwarded to the Board.

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 'opportunity sites' 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 Planner's report states that the site accords with section 5(1)(b) of the Urban and Regeneration and Housing Act 2015. In addition, the report states that it is the existence of anti-social behaviour that adversely impacts the character of the area in the context of Section 6(6) of the 2015 Act.
- 6.4. The appellant has stated that there is no market demand for commercial premises in Waterford. The statement is supported by a number of documents that show vacant commercial premises throughout the city. The 2015 Act refers to either residential land or regeneration land and ascribes different qualifying parameters for each. Commercial demand for property is not a consideration in relation to regeneration land. Therefore, no assessment of market demand for commercial premises in Waterford is necessary or warranted.
- 6.5. The appellant maintains that their site is not in a ruinous/neglected condition. Buildings on site have been removed. Anti-social behaviour is not taking place. The appellant contends that the site cannot be considered a regeneration site. 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.

- 6.6. Because the appellant has questioned the classification of the site as regeneration, 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 planning authority have not stated a lack of services and infrastructure and considering the zoning objective for the site and environs, I conclude that there are amenities in the area that can be impacted upon. There are no buildings on the site. I note that relatively recent clearance works have been carried out on the site, including the regrading and clearance of drainage channels and a river. The works are of a minor nature and could be considered to comprise

the general upkeep and maintenance of the property. However, given the minor scale of the works recently carried out, I do not consider that significant development has commenced on site or that the site is being put to beneficial use. The site is therefore vacant or idle and in such a state that may have adverse effects on the amenities or character of the area.

- 6.7. That being so, section 6(6) of the Act refers. The site is not in a ruinous condition as evidenced by the absence of buildings and the recent clearance works that indicate ongoing maintenance and upkeep of the site. However, a small amount of graffiti is present on remaining boundary walls and this could indicate the presence of anti-social behaviour. The planning authority have stated that 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, the site is well maintained as evidenced by recent clearance works. In terms of antisocial behaviour taking place, I do not consider a small amount of graffiti to be significant evidence to demonstrate that such behaviour is taking place to such an extent that impacts upon the amenities of the area. The site fails to meet all the requirements of a vacant site in accordance with section 6(a) and (b) of the 2015 Act. Given the foregoing, the site should not be added to the register.
- 6.8. The appellant makes the point that the site is difficult to develop due to the proximity of the former Council dump to the south. The 2015 Act is concerned with the mechanism to identify and release vacant sites for beneficial use. The success or otherwise of site development in the context of the wider area is a matter for the landowner and cannot be addressed in this assessment.
- 6.9. The appellant is concerned that the making of a planning application would be premature pending the delivery of an overall plan for the area and the lack of gravity mains drainage. This may or may not be a relevant matter to consider in terms of site development. In any case, I note that there are no current planning permissions that can be implemented on the site.
- 6.10. In the context of the comprehensive redevelopment of the area, the appellant notes that nearby sites have not been included on the Vacant Sites Register. The appellant's observations on nearby sites and the logic of area wide development are noted. However, the 2015 Act is quite specific about the establishment of a Vacant

Sites Register and the various appeal processes open to landowners. The appellant's comments regarding other sites in the vicinity and any future area wide planning and development have no bearing on this appeal.

6.11. The site is zoned 'opportunity sites' and is identified in the City Development Plan as land suitable for regeneration. The site fails to satisfactorily meet all 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. Given the foregoing, I conclude that the majority of the site is not vacant or idle in accordance with the 2015 Act. I am satisfied that the entry of the subject site on the Vacant Sites Register of Waterford City and County Council should not be confirmed.

7.0 Recommendation

7.1. The site is zone 'opportunity site' 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 all 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 condition of the site does not have adverse effects on the character or amenities of the area due to the well maintained condition of the site, the lack of antisocial behaviour taking place, and that there has not been a reduction in the number of habitable houses or people living in the area.

7.2. I recommend that the Board should determine that the site at Lands at Cork 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 and

(d) The failure of the site to meet all 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, insofar as the condition of the site does not have adverse effects on the character or amenities of the area due to the well maintained condition of the site, the lack of significant evidence of antisocial behaviour taking place, and that there has not been a reduction in the number of habitable houses or people living in the area

the Board is satisfied that the site was vacant or idle for the relevant period.

Stephen Rhys Thomas
Planning Inspector

20 February 2018.