



An
Bord
Pleanála

Inspector's Report

ABP-303775-19

Type of Appeal	Appeal against a Section 18 Demand for Payment
Location	Fr. Hayden Road, Kilkenny
Planning Authority	Kilkenny County Council
Planning Authority VSL Reg. Ref.	VSR18-6
Site Owner	John and Margaret Mc Grath
Planning Authority Decision	Demand for Payment
Date of Site Visit	17 th April 2020
Inspector	Erika Casey

1.0 Introduction

- 1.1. This appeal refers to a Section 15 Notice of Demand for Payment of Vacant Site Levy issued by Kilkenny County Council, stating their demand for a vacant site levy for the year 2018 amounting to €6,000 for a site located at Fr. Hayden Road, Kilkenny (VSR18-6).
- 1.2. The appeal site has two stated registered owners, John Mc Grath and Margaret McGrath.

2.0 Background

- 2.1 The Notice of Proposed Entry on the Vacant Sites Register was issued to John and Margaret Mc Grath on the 3rd of November 2017. On the 7th December 2017, the Notice of Entry on the Vacant Sites Register was issued to John and Margaret Mc Grath. No appeal was made in respect of the Notice of Entry on the Vacant Sites Register.
- 2.2 A valuation pertaining to the site was issued by Kilkenny County Council on the 22nd of May 2018 under Section 12(4) of the Urban Regeneration and Housing Act 2015. The value of the site was determined to be €200,000. A further notice pursuant to Section 11(1) of the Urban Regeneration and Housing Act 2015 was issued to John and Margaret McGrath on the 29th of May 2018.
- 2.3 A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to John and Margaret Mc Grath on the 24th of January 2019 for the value of €6,000. The appellants have appealed the Demand for Payment Notice issued pursuant to Section 15 of the Urban Regeneration and Housing Act.

3.0 Site Location and Description

- 3.1 The subject site with an area of 0.17ha ha is located on the northern side of Fr. Hayden Road, to the south of Kilkenny City Centre. The site has a long, narrow linear configuration with substantial road frontage to the Fr. Hayden Road. To the east of the site, is a terrace of two storey housing. To the north, there are a number of large detached houses on their own grounds. To the south, are further terraces of

housing and individual residential properties. To the east, the site abuts a dwelling house.

3.2 The site itself currently accommodates 2 partially constructed dwellings. The dwellings are largely completed but are boarded up and bound in part by fencing. To the east of the two dwellings is a linear grassed area. A stone wall abuts the northern boundary of this space. There is evidence of builder's waste and rubbish strewn across this area. At the eastern end of the site, there is a shed structure located behind a high stone wall. The site generally has an unkempt appearance.

4.0 **Statutory Context**

URH ACT

4.1 The Notice issued under Section 7(1) of the Act states that the PA is of the opinion that the site referenced is a vacant site for the following reasons:

1. The site is zoned in the Kilkenny City and Environs Development Plan to accommodate residential development,
2. The site is situated in an area in which there is a need for housing,
3. The site is suitable for the provision of housing, and
4. The site, or the majority of the site, is vacant or idle.

4.2 These provisions relate to Section 5(1(a)) of the Act. Section 5(1)(a) of the Act as amended by Section 63 of the Planning and Development (Amendment) Act 2018 states 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 where there is a need for housing,
- (ii) The site is suitable for the provision of housing and
- (iii) The site, or the majority of the site, is 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.

4.3 The Act defines 'residential' land at Section 3 as follows:

“residential” land means land included by a Planning Authority in its development plan or local area plan in accordance with section 10(2)(a) of the Act 2000 with the objective of zoning for use solely or primarily for residential purposes, and includes any structures on such land.”

- 4.4 Section 18 of the Act states that the owner of a site who receives a demand for payment of a vacant site levy under section 15 may appeal against the demand of the Board in 28 days.

The burden of showing that:

- (a) the site was no longer a vacant site on 1st January in the year concerned, or
- (b) the amount of the levy has been incorrectly calculated in respect of the site by the Planning Authority,

is on the owner of the site.

5.0 **Development Plan Policy**

- 5.1 The Kilkenny City and Environs Development plan 2014-2020 is the operative development plan. The site is located on lands that are subject to zoning objective Existing Residential – *‘To protect, provide and improve residential amenities’*.

- 5.2 Objective 3A of the plan states: 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.

6.0 Planning History

Application Reference 00/990077

6.1 Permission granted in December 2000 for a development comprising 6 no. dwellings.

Application Reference 14/990018

6.2 Permission granted in September 2014 for elevational amendments to 2 no. dwelling houses.

7.0 Planning Authority Decision

Planning Authority Reports

7.1 A Vacant Site Report was prepared for the site outlining the date of the site visit (13.03.2017), zoning, and the type of site for the purposes of the Act which in this case is 'Residential' land. It is stated that the site is suitable for housing and is located in an area in need of same. Having regard to the above criteria and information, it is considered that the site should be included on the register.

8.0 The Appeal

8.1 Grounds of Appeal

8.1.1 The grounds of appeal of the appellant can be summarised as follows:

- Two houses which are under the course of construction and are charged to EBS DAC. The houses are being completed after a delay caused by the recession and a fire in one of the houses. Arrangements were finalised with the bank in September 2018 which facilitate the completion of the two houses. Internal works are ongoing and there is a contractual commitment to complete a sale by 2020. The houses are being progressed and the site is not vacant.
- The remainder of the property is within the curtilage and amenity of a private dwelling and is included on the title deeds of this property. It is not a vacant site under the terms of the Act. Confirmation from solicitor submitted including Title Deed for the entire property and map showing the extent of same with the 2 houses under the course of construction. (Note: other than a map, no correspondence from Smithwick Solicitors on file).

8.2 PA Response

- Permission granted on the site in 2000 for 6 semi-detached houses with associated site works under reg. ref. 00/990077. Permission for elevational changes was subsequently granted under reg. ref. 14/990018.
- Under Section 10 of the Urban Regeneration and Housing Act, the owner is obliged to notify the Planning Authority if the site is no longer vacant or idle. To date, the appellant has not notified the Council in this regard. Site visit undertaken in March 2019 and no evidence of work was discernible on the site. The levy demand remains valid.
- The extent of the vacant site was taken as being the site subject to the permission, in addition to the outbuilding and adjoining yard, which appeared to be used as storage of building materials in association with the vacant site.
- According to the Property Registration Authority, the area designated as the vacant site and the house referred to in the submission are unregistered. The current OSI mapping the Council employs shows no property boundary between the houses and the remainder of the site. The designation of the vacant site was based on the situation on the ground.
- Note that 5 notices were issued to the appellant. State that they are happy to correct the notice now that they are in receipt of the full information that the owner uses this area for the amenity of their dwelling if the Board so directs. This reduces the area of the site from 0.17ha to 0.144ha.

8.3 Further Response

- Given the advanced status of construction of these houses, the nature of banking, technical work, enabling and internal works, notice issues if any, are an academic point. State that they are submitting further information from Fitzgerald Business Solutions confirming banking arrangements to allow completion of 2 houses and a further letter from a Building Surveyor. (Note only correspondence from Ivor O' Brien Associates Building Surveyor on file).
- State that KCC made an expansive and erroneous judgement on the extent of the site. Note that the shed on the property was used for storage of plant and materials. The site for consideration should be restricted to that for the 2 houses only.

- State that only 2 houses have been constructed on the site. All of the property except for the sites of these 2 houses has been and continues to be within the curtilage and amenity of the private dwelling.

9.0 **Assessment**

9.1 This appeal relates to a Section 15 Demand for Payment. In accordance with the provisions of the legislation there are 2 key criteria to consider:

- (a) the site was no longer a vacant site on 1st January in the year concerned, or
- (b) the amount of the levy has been incorrectly calculated in respect of the site by the Planning Authority.

I will consider each of these in turn.

The site is no longer vacant

9.2 The Board should be aware that the provisions of Section 18(2) of the Act does not specify whether the applicant must demonstrate whether the site constitutes a vacant site as per the provisions of Section 5(1) (a) i.e. that the site constituted a vacant site in the first instance when the Section 7(3) Notice was issued or whether they must demonstrate that notwithstanding the Notice issued, that development has taken place on the site and it is no longer vacant as of the 1st of January 2019.

9.3 For the purposes of this assessment, I will consider both scenarios.

Is it a Vacant Site

9.4 Section 5(1)(a) of the Act sets out the criteria for a vacant site consisting of 'Residential' land. By reference to the Planning Authority notice, the subject site comprises 'Residential' land for the purposes of the Vacant Site Levy. The subject site is located in an area zoned Existing Residential – '*To protect, provide and improve residential amenities*'. This assessment takes into account the characteristics of the site in the context of Section 5(1)(a) residential land.

The Need for Housing in an Area

9.5 This it to be determined by reference to section 6(4) of the Act

- (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 houses qualified for social housing support in accordance with section 20 of the Housing (Miscellaneous Provisions) Act 2009 and 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.
- (d) Whether the number of habitable houses available for purchase or rent was less than 5% of the total number of houses in the area.

9.6 I have reviewed the report submitted by Kilkenny County Council with respect the subject vacant site. It is stated that the site is situated in an area in which there is a need for housing. I note however, that there is no other information on the file to support this contention in accordance with the criteria set out under section 6(4) of the Act. Whilst the PA may have prepared more detailed information regarding housing need in the County to support the entry on the vacant site register, this information is not before me and in the absence of same, I cannot determine this issue further. The Board may wish to consider requesting such information from the PA to assist in their determination of this appeal. However, it should be noted, I consider that there are a number of procedural errors with the notice which I will address further below.

Suitability of the Site For Housing

9.7 Suitability of the site for housing is to be determined by reference to Section 6(5) of the Act

- (a) the core strategy,
- (b) whether the site was served by the public infrastructure and facilities (within the meaning of section 48 of the Act 2000) necessary to enable housing to be provided and serviced, and
- (c) whether there was anything affecting the physical condition of the lands comprising the site which might affect the provision of housing.

9.8 Under the Core Strategy, the housing allocation for Kilkenny City is 2,977 persons by 2020. I note the planning history of the site which includes an extant permission for 6 no. units. 2 houses have been partially constructed on the site. The site is located within the existing urban area and is served by existing infrastructure. Nothing has

been identified by the appellant which would affect the physical condition of the lands which might affect the provision of housing. I am satisfied that the subject site is a suitable site for housing.

Vacant or Idle

9.9 The definition of vacant or idle as it relates to residential land states that the site, or the majority of the site is:

- (I) vacant or idle
- (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.

The Site was Vacant or Idle

9.10 From the documentation on the file, I am satisfied that at the time the notice of entry was made, the site was idle. It accommodated two unfinished housing units and the appellant has confirmed that works had ceased due to financial difficulties and a fire in one of the units.

12 Month Period

9.11 The Board may wish to note that the entry of a number of sites in Kilkenny onto the Vacant Site Register have been canceled on appeal due to procedural issues and specifically to the relevant time period. The 2015 Act (as amended) requires the Board on appeal to look at the past condition of the site and determine if the site was vacant or idle, section 9 states:

(2) On an appeal under this section the burden of showing that the site was not a vacant site for the duration of the 12 months concerned is on the owner of the site.

(3) Where the Board determines that a site was not a vacant site for the duration of the 12 months concerned or was no longer a vacant site on the date

9.12 The relevant time period for this appeal extends 12 months back from the date on which the site was entered on the register, in this instance the 7th of December 2017.

I note that the Planning Authority have stated that the site has been vacant for the duration of 12 months and I also note a site inspection date of the 14th of March 2017.

9.13 The relevant time period is a very important factor and one upon which the 2015 Act is quite plain in its interpretation, section 6(2) states as follows:

“A Planning Authority shall enter on the register a description, including a map, of any site in its functional area which was, in the opinion of the Planning Authority, a vacant site for the duration of the 12 months preceding the date of entry.”

9.14 The Planning Authority should provide a clear chronology to confirm site visits and provide a definitive assessment of the duration of twelve months. In this instance, the Planning Authority have not adequately accounted for the duration of the twelve month period. It is likely at the time the site visit was undertaken by the PA that the site had been inactive or idle for the relevant time period, but it is not clear from information presented by the Planning Authority that the relevant time period has elapsed and the condition of the site cannot be fully understood without doubt.

9.15 Even though it is likely and probable that the lands had been vacant or idle for the relevant time period, I cannot be certain. For this reason alone the site should be removed from the register. This does not preclude the Planning Authority from recommencing the process and implementing the 2015 Act in terms of allowing the relevant 12 month time period to elapse.

Compliance with the Definition of a Vacant Site

9.16 It is set out by the appellant that part of the subject site identified as a vacant site for the purpose of the levy forms part of the garden of the dwelling abutting the eastern boundary of the site. It is argued that it forms part of the curtilage of this property. A map is submitted indicating the part of the site that is within the curtilage of the existing house. The portion of the site in question appears to accommodate a shed structure and it is stated by the appellant that this is use for storage purposes.

9.17 Having regard to the definitions set out in Section 5(2) of the Act, the definition of 'home' states that this can include *“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”*.

9.18 It is stated by the Planning Authority that the extent of the Vacant Site was taken as being the site subject to the extant planning permission, in addition to the outbuilding and adjoining yard which appeared to be use of storage of building materials in association with the vacant site. The designation was based on the situation on the ground. The PA state that they are happy to correct the notice, if the Board so directs.

9.19 It is somewhat ambiguous as to whether the subject shed forms part of the curtilage of the existing dwelling house or whether it constitutes part of the vacant site. On balance however, having regard to the documentation submitted by the appellant; my observations on site and in particular the nature of the boundary treatment around the existing shed; the observations of the PA; and a review of aerial photos of the site, I am of the view that the shed structure most likely forms part of the curtilage of the existing house. In this regard, it should not form part of the vacant site identified by the Planning Authority.

9.20 Having regard to foregoing, I consider that the subject site is part of the curtilage of the existing dwelling to the east and is required for the convenience of that dwelling. In this context, I am not satisfied that the full extent of the site identified constitutes a vacant site in accordance with the provisions of the legislation. There is no provision in the Act to enable the Board to amend the identified boundary of the vacant site.

The site is no longer vacant as of the 1st of January 2019

9.21 The appellant has stated that the site that the site is no longer vacant or idle and that works are underway to complete the two unfinished dwellings on the site. At the time of the site visit, it was noted that the two dwellings on the site remain unfinished. It is evident that there has not been any construction activity on the site for some time. The site in my opinion is idle.

Levy Calculation

9.22 A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to John and Margaret McGrath on the 24th of January 2019 for the value of €6,000. The site was valued at €200,000.

9.23 The levy rate applicable in this instance is 3%. It is evident, therefore, that the levy calculation has been correctly calculated.

10.00 **Recommendation**

10.1 I recommend that in accordance with Section 18 (3) of the Urban Regeneration and Housing Act 2015 (as amended), the Board should cancel the Notice of Demand for Payment of Vacant Site Levy as the site was not a vacant site as of the 1st of January 2019 and was not a vacant site on the 24th of January 2019, the date on which the appeal was made. The demand for payment of the vacant site levy under Section 15 of the Urban Regeneration and Housing Act 2015 is, therefore, cancelled. In accordance with Section 18(4) of the Urban Regeneration and Housing Act 2015 (as amended), the Board confirm that the amount of the levy has been correctly calculated in respect of the vacant site.

11.0 **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) That part of the identified site forms the curtilage an existing residential dwelling and is required at least in part for the amenity or convenience of this dwelling,
- (e) The recorded date of the site inspection, (14.03.2017) provided by the Planning Authority in its submitted documentation and the absence of sufficient evidence to support the contention of the Planning Authority that the site was vacant and idle for the period of 12 months preceding the date of placing the site on the register,
- (f) The absence of documentation to support the contention that there is a housing need in the area,

the Board is not satisfied that the site was a vacant site on the 1st of January 2019 and was a vacant site on 24th of January 2019, the date on which the appeal was made. The demand for payment of the vacant site levy under Section 15 of the Urban Regeneration and Housing Act 2015 is, therefore, cancelled.

Erika Casey

Senior Planning Inspector

17th April 2020