



An
Bord
Pleanála

Inspector's Report ABP-303575-19

Type of Appeal	Appeal against a Section 18 Demand for Payment
Location	Land at 74 Strand Road, Bray, Co. Wicklow
Planning Authority	Wicklow County Council
Planning Authority VSL Reg. Ref.	VS/B/08
Site Owner	Jarlath and Lorraine Sweeney
Planning Authority Decision	Demand for Payment
Date of Site Visit	2 nd December 2019
Inspector	Joanna Kelly

1.0 Introduction

- 1.1 The appeal refers to a Section 15 Notice of Demand for Payment of Vacant Site Levy issued by Wicklow County Council, stating that their demand for a vacant site levy for the year 2018 amounting to €16,500 for a site located at 74 Strand Road, Bray, Co. Wicklow.
- 1.2 The appeal site has two stated owners, Jarlath and Lorraine Sweeney, Ashleigh Falls, Newtown, Enniskerry, Co, Wicklow.

2.0 Site Location and Description

The site is located at no. 74 Strand Road, Bray along Strand Road fronting the South Esplanade. The site immediately abuts the Esplanade Hotel to the south, a red brick Victorian landmark building at this location. The site contains single storey structures. Documentation on file indicates these structures were used as a dance hall/gym in the past. There are 'no parking' signs to the boundary wall with the hotel and planters are provided along the edge of the site with the public footpath. There is security fencing preventing access to the rear of the site located to the side of the residential property to the north. This property appears to be in the same ownership but is not included in the parcel of land identified for the purposes of the vacant site.

3.0 Statutory Context

3.1. URH ACT

- 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 6 (6) of the Urban and Regeneration and Housing Act 2015. The Notice is dated 1st December 2017 and is accompanied by a map outlining the extent of the site to which the Notice relates.
- 3.1.2. Section 5(1)(b) of the Act states that a site is a vacant site if in the case of a site consisting of 'regeneration' land –

- (i) The site, or 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 provide 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.

3.1.3 With regard to the adverse effects, Section 6(6) of the Act sets out a number of criteria including:

- (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;
- (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.

3.1.4 The Act defines 'regeneration' land at Section 3 as follows:

'regeneration land means land identified by a Planning Authority in its development plan or local area plan, after coming into operation of section 28, in accordance with section 10(2) (h) of the Act of 2000 with the objective of development and renewal of areas in need of regeneration and includes any structures on such land'.

3.1.5 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.

3.2. Development Plan Policy

3.2.1 The 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. The 'Sea-Front' zoning is identified as such a zone.

3.2.2 The Bray Municipal District Local Area Plan 2018-2024

This LAP is the operative plan for the area which had effect from 10 June 2018. The subject site is zoned 'SF – Bray Seafront' with an objective to 'provide for the development and improvement of appropriate seafront uses'. The plan seeks '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.'

3.2.3 The Town Centre and Retail Strategy for Bray sets out that Bray seafront area shall be a vibrant and attractive seafront area, which functions as the primary tourist, recreational and leisure centre of the town. It is a priority to rejuvenate the seafront area through the expansion of retail and nonretail services, particularly targeted at the visitor market and tourism products.

3.2.4 Section 7.1 Bray Seafront & Esplanade provides that the 'Seafront Area' is defined as the area included in the 'SF' and OS1 zones, which run parallel to Bray Beach. Bray Seafront is a locally distinctive and significant area in the town. It is rich in architectural and natural heritage, comprising the beach, the Esplanade and many fine architectural structures dating to Victorian times, many of which are listed in the Record of Protected Structures. The area has huge symbolic, cultural, social and economic importance and as such, its character must be preserved to ensure that its amenity and economic value is safeguarded for existing and future generations.

4.0 Planning Authority Decision

4.1. Planning Authority Reports and Notices

- 4.1.1 A Vacant Site Report was prepared for the site when it was proposed for entry on the Vacant Sites Register. A notice regarding the proposed entry issued to Jarlath Sweeney.
- 4.1.2 A response to this notice was received from Jarlath Sweeney confirming that Jarlath and Lorraine Sweeney were the owners of the land. The response also sought a pre-planning meeting.
- 4.1.3 A subsequent notice issued (under separate cover) to both Jarlath and Lorraine Sweeney indicating that the Council decided to enter the site onto the Vacant Ste Register. This notice is dated 1st December 2017 and sets out that in accordance with section 5(1)(b) of the Urban and Regeneration and Housing Act 2015 that the site, or majority of the site is vacant or idle and the site being vacant or idle has adverse effects on existing amenities, 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 adverse effects on the character of the area. This Notice was not appealed.

4.1.4 Section 11 Notices issued to Jarlath Sweeney and Lorraine Sweeney dated 1st June 2018. It sets out that the land unregistered shall be charged and levied for each year beginning with 2018 in respect of each vacant site in relation to which a market value has been determined that stands entered on the register.

4.1.5 A subsequent report was prepared by the planner and is co-signed by the Senior Planner and Director of Services. It sets out that the site selection criteria 'regeneration land' indicates a valuation of €550,000. A valuation report is noted on file from O'Gorman Consultants. This report refers to the zoning as 'town centre'. The report notes that the title is assumed to be freehold and in conclusion sets out that the valuation and the approximate open market value is €550,000.

4.1.6 Section 12(4) Notices dated 26th July 2018 issued to the owners indicating the market valuation as €550,000.

4.1.7 A subsequent report titled 'Vacant Site Register Section 15' was prepared and confirmed that pursuant to site inspection 7th January 2019 the site's status and condition was unchanged. The building on site remained vacant with shutters closed down and in a poor visual condition. The open space at the site was littered with a skip and various articles of building equipment. It was recommended that a Demand Notice under Section 15 be issued.

4.1.8 A Section 15 Demand Notice for €16,500 was served on both parties dated 9th January 2019.

5.0 The Appeal

5.1. Grounds of Appeal

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

- Site was not vacant on 1st January 2018.
- Site is designated 'tourism' in the Bray Municipal District Local Area Plan.

- The land and building are adjacent the Esplanade Hotel and its current use is primarily for Tourism use as hotel storage, car parking and coach parking and the Hotel Duty Manager's house and provides the spaces as required by the hotel and by the planning permission as well as storage for the Hotel.
- All application seeking permission have been refused by the planning authority.
- Majority of the site is now occupied. The house on the site is occupied currently and for a number of years by the hotel duty manager.

5.2. Planning Authority Response

The response from the Planning Authority is summarised as follows:

- The site is zoned 'Sea Front' and not 'Tourism' as set out in the appeal.
- The Sea Front Zoning has been designated as a zoning which will be examined under the Urban Regeneration and Housing Act (as amended) in the Wicklow County Development Plan 2016-2022.
- The last permitted and activated development of this site was in 2000 which pertained to an extension to the rear of the original hotel. This application showed the vacant lands as forming part of phase 2 lands and did not show or propose any hotel related use on the site other than a coach pull in area which was subsequently omitted as part of compliance.
- The last known use of the structure on site was as 'Cross Fit' gymnasium which has not operated since late 2016.
- On first inspection in 2016 the lands to the side (north) and rear (west) of the structure were not accessible to hotel patron cars or coaches being blocked from the public road by a shipping container and by fencing.
- By 2017 the container and fencing has been removed and an area to the front of the site had been resurfaced, and haphazard car parking appeared to be occurring to this area. A metal panel fence had been erected between this area and the rear of the site with the site rear being clearly visible through the mesh fence.

- This situation persists and photographs are attached. The only use being observed has been associated with the storage of waste and builders' vehicles related to the renovation of the house on the lands adjoining to the north.
- The appeal submission makes reference to a house on site occupied by a hotel duty manager which is assumed to be a house located to the west of the vacant site and is not included in the boundary of the registered site.
- Requests the Board to uphold the decision of the Council to include the subject site on the Vacant Site Register.

5.3 Response from Appellants to the Planning Authority's Response

- The site including the building formally used as a gym/leisure centre was purchased by the current owners with the Esplanade Hotel in 2003 and has been an integral part of the hotel since then providing leisure facilities for guests and later as storage facilities for internal renovations and vital secure off-street parking for the coach business.
- The steel contained was removed in 2017, and buildings were repainted. The area to the front was also re-surfaced. A mesh fence was also erected to screen off the back of the site from the road and reserved a specific area for coach parking for the hotel.
- The neighbouring hotel adjacent to the site was undertaking renovations in 2017/2018 and the builder parked skips in this area as there was no garden space to accommodate same on adjoining site.
- The buildings are accessed and utilised by the hotel daily and currently cater for approx. 10 coach parties staying overnight at the hotel per week.

6.0 Assessment

6.1. This appeal relates to a Section 15 Demand for Payment. In accordance with the provisions of the legislation there are two 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 in turn.

6.2 (a) The site is no longer vacant

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) (b) 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 January 2019.

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

6.3 Is it a Vacant Site ?

As the lands are not zoned for residential purposes the relevant test in this instance is whether the land identified for regeneration is a vacant site.

As per Section 5(1) (b) of the Act, in the case of a site consisting of regeneration land-

- (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.

The matters at (ii) above are to be determined by reference to (as per section 6(6) of the Act) 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.

6.4 The Planning Authority indicate that the last known use of the site was a gym in 2016. However, the appeal in respect of the demand notice indicates that the site is in use and has always been in use associated with the adjoining hotel. If this is the case, it is curious why the owners did not appeal the entry onto the Register in the first instance. In any event, given the photographic evidence and planning authority's reports noted on file, I am satisfied that the site or the majority of the site was such that was considered vacant or idle.

6.5 In order to comply with the requirements of section 5(1)(b), the site must also meet part (ii) of the section which provides that 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. Section 6(6) provides that this shall be determined 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.

I will address each in turn.

6.6 In relation to sub-section (a) I note that since the initial notification regarding the proposed entry onto the Register that some improvements works have been carried

out which include removal of debris, skips etc. on the site. The existing structures and land are not such that I would consider could be described as in a ruinous or neglected condition in my opinion.

- 6.7 I am also not convinced that the site is such that contributes in any significant part to anti-social behaviour that is or was taking place in the area so as to meet with part (b) above. There was no evidence of any anti-social behaviour occurring at time of my inspection.
- 6.8 There is no evidence to address part (c) that there is a reduction in the number of habitable houses, or the number of people living, in the area, however given the development undertaken elsewhere in the immediate vicinity I do not consider that it would be reasonable to consider that such a reduction is the case.
- 6.9 Therefore, while the test in Section 5(1)(b) (i) may be met I do not consider that Section 5(1)(b)(ii) is met in that the site being vacant or idle has adverse effects on existing amenities or reduces the amenity provided by existing public infrastructure and facilities in the area or has adverse effects on the character of the area. Therefore, I do not consider that the site can be categorised as a vacant site as defined by Section 5(1)(b) of the Act.

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

The appellant has indicated that the subject site is no longer vacant/idle on the basis that it is and has been used for purposes associated with the hotel. I note the response from the Planning Authority in this regard and that there is no relevant planning permission on the site for the parking of coaches on the subject lands. Given that I do not consider that the site met the tests in respect of regeneration land in the first instance, I do not consider that it is appropriate to consider whether the lands are still vacant.

6.11 **Levy Valuation**

The owners of the site have not contested the findings of the market valuation report which indicates a market value of €550,000. Therefore, the demand notice for €16,500 is in my opinion the correct calculation based on 3% of this valuation.

7.0 **Recommendation**

I recommend that in accordance with Section 18 (3) of the Urban Regeneration and Housing Act 2015 as amended, the Board should cancel the entry that the site was a vacant site as of the 1st January 2018 and was not a vacant site on 28th January 2019, the date on which the appeal was made as the site does not meet the tests of Section 5(1)(b) and Section 6 (6) of the Act and therefore no payment of the vacant site levy under Section 15 of the Urban Regeneration and Housing Act 2015 is therefore required.

8.0 **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 Senior Planning Inspector,
- (d) The fact that the site is identified for urban regeneration in the Wicklow County Development Plan 2016, and
- (e) The test for land identified for regeneration were not met in that the land or majority of the land while vacant or idle are not such that could be considered to have 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

the Board is not satisfied that the site was a vacant site on the 1st of January 2018 and was a vacant site on 28th January 2019, the date on which the appeal was made in respect of the Demand Notice, the amount of the levy being correctly calculated. The demand for payment of the vacant site levy under Section 15 of the Urban Regeneration and Housing Act 2015 is, therefore, cancelled.

Joanna Kelly
Senior Planning Inspector

3rd December 2019