



An
Bord
Pleanála

Inspector's Report ABP-303595-19

Type of Appeal	Section 18 Appeal against demand for payment of vacant site levy
Location	Church Road, Newtownmountkennedy, Co. Wicklow
Planning Authority	Wicklow County Council.
Planning Authority VSL Reg. Ref.	VS/NTMK/14
Appellant	Knockree Developments Ltd.
Planning Authority Decision	Demand Payment of Levy.
Date of Site Visit	22 nd August 2019.
Inspector	Stephen J. O'Sullivan

1.0 Introduction

- 1.1. This appeal is an appeal against a demand by the planning authority under section 15 of the Urban Regeneration and Housing Act 2015, as amended, for the payment of €42,000 as a levy in respect of a site on the Vacant Sites Register at Church Road, Newtownmountkennedy, Co. Wicklow.

2.0 Site Location and Description

- 2.1. The site is just to the north of the historic core and town centre of Newtownmountkennedy. It has an area of c1.55ha and is under grass. The site has c40m of frontage onto Church Road on its eastern boundary opposite St. Matthew's Church. There is a narrow footpath along the site's frontage onto that road but none on the other side. The western site boundary and half its northern boundary adjoin the back gardens of late 20th century semi-detached houses. The eastern half of the northern boundary is with the grounds of an older detached house. The southern boundary adjoins the curtilages of older houses that provide street frontage for the town centre, and the land behind the Parkview Hotel.

3.0 Statutory Context

3.1. Urban Regeneration and Housing Act 2015, as amended

- 3.1.1. Section 3 of the act states that "regeneration land" means land identified by a planning authority in its development plan or local area plan, after the 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.
- 3.1.1. Section 5(1)(b) of the act provides criteria to define a vacant site for regeneration land which refers to
- Whether the site or a majority of it is vacant or idle, and
 - Whether the site being vacant or idle has adverse effects on existing amenities or reduces the amenity provided by public infrastructure and facilities within meaning of section 48 of the

planning act in the area in which the site is situated or has adverse effects on the character of the area

- 3.1.2. Section 6(2) states that 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.
- 3.1.3. Section 6(6) of the act provides that the council shall determine whether or not 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 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.
- 3.1.4. Section 7 of the act requires the planning authority to give notice to the owner of a site of its intention to enter the site on the register and to consider submissions from the owner. If the site is entered on the register then notice of the entry must be given to the owner. Section 9 allows the owner of the site to appeal its entry to the board within 28 days of that notice.
- 3.1.5. Section 11 of the act requires the planning authority to give notice to the owner of each site on the register before 1st June 2018 that the site was registered on 1st January 2018 and that a levy shall be charged every year in accordance with section 15 of the act. The notice shall also inform the owner that submissions may be made within 28 days which shall be considered by the planning authority and if the authority is satisfied then it shall cancel the entry. If the planning authority does not cancel the entry then it shall give notice to the owner that it may appeal that decision to the board within 28 days.

- 3.1.6. Section 12 of the act sets out how the planning authority determines the market value of the site on which the calculation of a levy will be based and requires it to give notice of that valuation to the owner. Section 13 states that the determination may be appealed to the Valuation Tribunal.
- 3.1.7. Section 15 requires a levy to be charged for each year beginning in 2018 in respect of each site on the register which shall be payable on a demand issued by the planning authority. Section 18 says that an owner who receives such a demand may appeal it to the board within 28 days and that where the board determines that the site was no longer vacant it shall give notice to the planning authority to cancel the entry on the register and that where the board determines that the amount of the levy has been incorrectly calculated it shall give notice to the authority to correct the amount levied.
- 3.1.8. Section 16(1) states that the amount of a levy for 2018 shall be 3% of the market value determined under section 12, and 7% for 2019 and each subsequent year.
- 3.1.9. Section 17(1) states that, notwithstanding sections 15 and 16 , where in any year there is a change in ownership of a vacant site the amount of vacant site levy to be charged in respect of that site for that year, and for the preceding year, shall be zero.

4.0 Planning Policy

4.1. Newtownmountkennedy Local Area Plan 2008-18

- 4.1.1. The site is zoned for town centre activities under objective TC. There is an objective for improvements to Church Road in front of the site.

4.2. The Wicklow County Development Plan 2016-2022

- 4.2.1. Chapter 4 of the Plan refers to Urban Regeneration and Housing in 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.

5.0 Planning History

- 5.1. ABP-305244-19, Reg. Ref. 19/49 – There is an appeal before the board against a decision by the council to grant permission for 43 apartments, 28 houses and a creche on the site.
- 5.2. ABP-300588-18 – The board cancelled an entry in the Vacant Site Register in respect of land behind the Park View Hotel immediately to the south of the current site. The reasons for the decision stated that the site was not directly visible from Main Street and did not appear neglected, and therefore was not considered to have adverse effects on the amenities or character of the area.

6.0 Planning Authority Decision

6.1. Planning Authority Notices

- 6.1.1. An undated report from the council's planner stated the site was regeneration land. It was described as a greenfield site that was overgrown and did not appear to be maintained. The report stated that it had been vacant for 12 months and that the vacancy of the site has adverse effects on existing amenities or reduces the amenity provided by existing infrastructure and facilities in the area or has adverse effects on the character of the area. The lack of development impacts on the ability of the town

centre to fulfil its function under the LAP and development plan. It is an optimal site for mixed use development outside the retail core. It is an objective of the LAP to use vacant sites and to allow for the expansion of the town centre where development can best use existing infrastructure and facilities. The site meets the criteria in the act and should be brought forward for development to enhance the vitality and viability of the town centre.

6.1.2. The council issued a notice to Holcross Holdings Ltd under section 7(1) of the 2015 act on 26th July 2017 stating that it was considering entering the site on the Vacant Sites Register because

- the site or a majority of it had been vacant or idle for 12 months and
- the site being vacant or idle had adverse effects on existing amenities or reduces the amenities provided by existing public infrastructure or has adverse effects on the character of the area.

6.1.3. A report from the council planner dated 16th November 2017 stated no response had been received. It recommended that the site be entered on the register.

6.1.4. The council entered the site on the register by order dated 1st December 2017. The order referred to the planner's report. The notice of the entry stated that the council had determined in accordance with section 5(1)(b) of the act that the site being vacant or idle has adverse effects on existing amenities, reduces the amenity provided by existing public infrastructure and facilities and has adverse effects on the character of the area, and that in accordance with section 6(6) the site being vacant or idle had adverse effects on the character of the area because the land or structures in the area are in a ruinous or neglected condition.

6.1.5. The appellant wrote the council on 18th December 2017 stating that it had purchased the site and that it intended to make an application for permission to develop it, so the site should be removed from the register. The council responded on 21st February 2018 noting the circumstances, but stating that the site could only be removed from the register when it ceases being vacant or idle.

6.1.6. The council issued a notice on 1st June 2018 under section 11 of the act to the appellant including details of the entry of the site on the register and stating that a levy would be charged for each year in relation to the market value of the site. The

notice invited submissions from the owner and stated that if the authority decided not to cancel to entry on the register after the receipt of submissions, then that decision could be appealed to the board. The appellant submitted documents to the council on 6th June 2018 describing its purchase of the site and its entry on the Land Registry. A report from the council planner dated 3rd July 2018 stated that the change of ownership would not justify the removal of the site from the register. The council issued a notice on 27th July 2018 under section 11(3) stating that the it was satisfied that the site is a vacant site and that its entry on the register had not been cancelled.

6.1.7. The council received a valuation report for the site dated 15th June 2018 which put the open market value of the site at €1,400,000. On 31st July 2018 the council issued to the appellant a notice under section 12 of its determination of the value of the site as €1,400,000.

6.1.8. The council planner made a report on 9th January 2019 that the site had been inspected on 7th January and that its status was unchanged. It remains overgrown and unkempt with signs of dumping. It is a visual blight on a main route to the town centre. The report recommended that a demand notice be issued to the owner. On 9th January 2019 the council issued a demand for payment under section 15 of the act for €42,000 in respect of the vacancy of the site in 2018.

7.0 The Appeal

7.1. Grounds of Appeal

An appeal was received on 30th January 2019 against the imposition of a levy on the site stating that –

- The appellant purchased the site in December 2017 after it had been placed on the register,
- The appellant intends to develop the land in accordance and had made an application for planning permission under Reg Ref. 19/49, and
- The lands are not vacant and are let for farming

Therefore the site should not be included on the register and the levy should be rescinded.

7.2. Planning Authority Response

The response from the council received on 15th February 2019 states that it was made aware of the change of ownership of the site that occurred in December 2017. Under the act a change of ownership would not justify removing the site from the register although under section 17 it would mean that a levy would not be payable for the year the transfer occurred in 2017 or the preceding year 2016. However the levy is still payable for 2018 and so the notice issued for that year should stand. An intention to develop or the existence of a planning permission would not justify cancelling the notice or the site's entry on the register. With regard to use for farming, section 5(1)(a)(iii)(II) applies to residential land while the current site is regeneration land. The land was purchased after its designation as a vacant site.

The site is zoned town centre and its vacancy has been assessed under section 5(1)(b) of the act. The planning authority inspected the site on a number of occasions including December 2018 and January 2019 and its situation had not changed. The site is vacant and idle and this is having adverse effects on existing amenities at a prominent and central location along one of the main routes into Newtownmountkennedy. So the site meets the criteria set out at section 5(1)(b) of the act.

With regard to section 6(6) the site being vacant is causing a visual blight and has adverse effects on the visual amenities and character of the area. The site is in a neglected condition being overgrown and unkempt while there is also anti-social behaviour in the form of illegal dumping on the site. Therefore the site meets the criteria at section 6(6) of the act.

7.3. Further Responses

The appellant's response to the council's response was received on the 27th March 2019. It states that the appellant is fully engaged in trying to develop the site and there is a live application for permission on the site under Reg. Ref. 19/49. It would fly in the face of natural justice to impose a levy for 2018 on a site that was purchased in December 2017 when the appellant is making an effort to obtain planning permission. The council was incorrect when it described the site as overgrown and unkempt and subject to dumping. There may be confusion with

adjoining land to the south outside the site. Overgrown vegetation was removed to facilitate surveys for the planning application and copies of invoices for that work are submitted. The site should be removed from the register and the demand for a levy rescinded.

8.0 **Assessment**

8.1. The current case concerns an appeal under section 18 of the Urban Regeneration and Housing Act 2015, as amended, against a demand for the payment of a vacant site levy that was issued by the council under section 15 of the act. The appeal falls to be determined on the basis of the criteria set out in section 18(3) and 18(4) of the act which are

- whether the site was no longer a vacant site on 1st January 2019 and
- whether the amount of the levy has been incorrectly calculated by the planning authority,

with the burden on the appellant to show that the criteria have been met. The appeal does not dispute the calculation of the amount of the levy. The transfer of the ownership of the site in December 2017 would not affect the imposition of a levy for 2018, as set out in section 17(2) of the act.

8.2. The various notices from the planning authority make it clear that it applied the test set out in section 5(1)(b) of the act to determine whether the site was a vacant site on regeneration land, and that the authority concluded that it was vacant or idle and that it had adverse effects on existing amenities or reduced the amenities provided by public infrastructure or had adverse effects on the character of the area. It is appropriate in the course of the current appeal against a section 15 notice to consider whether the circumstances of the site on 1st January 2019 met the test for a vacant site under section 5(1)(b).

8.3. The council stated that the site was vacant and idle in January 2019. This statement is consistent with the observations made when the site was inspected. The appellant has asserted that it was used for agriculture but sufficient evidence was not submitted to disprove the council's statement on the matter. The council's position on the issue is accepted.

- 8.4. The council stated that illegal dumping had occurred on the site and that this amounted to anti-social behaviour in the area under section 6(6)(b) of the act. The appellant disputed that this was the case. No evidence of such dumping was observed when the site was inspected. It is therefore concluded that the dumping to which the council referred was not such a threat to the amenities of the area as to constitute anti-social behaviour under section 6(6)(b) of the act.
- 8.5. The site is zoned as part of the town centre for Newtownmountkennedy. It is immediately adjacent to the existing town centre and historic core. An appropriate development upon it could make a significant positive contribution to the town centre. Nevertheless the site is greenfield and does not appear to have previously been subject to urban development. It has never functioned as part of the town centre. The site has frontage onto Church Road which is a main street on the approach to the town centre. The frontage is marked by a stone wall with trees and hedges behind it. Its appearance is similar to that of the properties across the street including the church grounds. It is also similar to the appearance of the property to the north of the site on the same side of the street. The site's appearance is not in keeping with its town centre zoning, but it is pleasant and congruous with character of the adjoining land that is not zoned for town centre uses. In these circumstances it is not considered that the vacancy of the site detracts visual amenities or character of the area.
- 8.6. Therefore, based on the information submitted by the council and the appellant and the observations when the site was inspected in August 2019, it is concluded that the site was not in a ruinous or neglected condition on 1st January 2019, that anti-social behaviour was not taking place and that there had not been a reduction in the number of habitable houses or people living in the area. So, having regard to the criteria set out at section 6(6) of the act, it is concluded that the site was not a vacant site under section 5(1)(b) of the act on 1st January 2019 because its vacancy or idleness did not have adverse effects on existing amenities or reduce the amenity provided by existing public infrastructure and facilities or have adverse effects on the character of the area at that time.

9.0 Recommendation

9.1. I recommend that in accordance with Section 18 (3) of the Urban Regeneration and Housing Act 2015 (as amended), the Board determine that the site was no longer a vacant site as of the 1st of January 2019 and that it give notice to the planning authority to cancel its entry on the register and cancel the demand for payment of the vacant site levy under Section 15 of the act.

10.0 Reasons and Considerations

Having regard to:

- a) The information placed before the Board by the Planning Authority in relation to the entry on the Vacant Sites Register pertaining to the site,
- b) The grounds of appeal and subsequent submissions from the Planning Authority and the appellant,
- c) The report of the Planning Inspector,
- d) The circumstances of the site as greenfield land at the edge of the area zoned for town centre activity in Newtownmountkennedy whose appearance is not incongruous with that of the neighbouring land

the Board is satisfied that the site being vacant or idle does not have adverse effects on existing amenities, does not reduce the amenity provided by public infrastructure and facilities within meaning of section 48 of the planning act in the area in which the site is situated and does not have adverse effects on the character of the area.

Therefore the site was no longer a vacant site on the 1st of January 2019 and its entry on the register should be cancelled.

Stephen J. O'Sullivan
Planning Inspector

27th February 2020