



An  
Bord  
Pleanála

## Inspector's Report ABP-303617-19

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| <b>Type of Appeal</b>                   | Appeal against a Section 18 Demand for Payment |
| <b>Location</b>                         | Land at 58-59 Strand Road, Bray, Co. Wicklow   |
| <b>Planning Authority</b>               | Wicklow County Council                         |
| <b>Planning Authority VSL Reg. Ref.</b> | VS/B/01  |
| <b>Site Owner</b>                       | Stephen McEleaney                              |
| <b>Planning Authority Decision</b>      | Demand for Payment                             |
| <b>Date of Site Visit</b>               | 2 <sup>nd</sup> December 2019                  |
| <b>Inspector</b>                        | 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 €36,000 for a site located at 58-59 Strand Road, Bray, Co. Wicklow.
- 1.2 The appeal site has one stated owner, McEleney Homes.

## 2.0 Site Location and Description

The site, a corner site, is located at no. 58-59 Strand Road, Bray with frontage to the South Esplanade and frontage along Victoria Road. The site immediately abuts the railway line to the west. The site currently has hoarding erected and construction was taking place at time of inspection.

## 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 of the Urban and Regeneration and Housing Act 2015. The Notice is dated 1<sup>st</sup> 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.

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.

3.1.3 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'.

3.1.4 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 1<sup>st</sup> 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

#### 4.1.1. Planning Reports

A Vacant Site Report was prepared for the site when it was proposed for entry on the Vacant Sites Register. It is set out that the site has been vacant for 12 months and does not form part of a person's home. The site being vacant has adverse effects on the visual amenities and character of the Victorian seafront of Bray. Notwithstanding the good condition of the hoarding erected, such hoarding causes a visual blight on the seafront and the lack of buildings on the site breaks the building line and pattern, disrupting the overall appearance and completeness of the seafront. Notices issued regarding the proposed entry onto the register and a subsequent notice confirming its entry onto the register. None of these notices were appealed.

4.1.2 A Section 11 Notices issued dated 1<sup>st</sup> 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.

4.1.3 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 €1,200,000. 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 that the site benefits

from planning permission granted for 43 apartments and 2 retail units. The approximate valuation was given as €1,200,000.

4.1.4 Section 12(4) Notices dated 26<sup>th</sup> July 2018 issued indicating the market valuation as €1,200,000.

4.1.5 A subsequent report titled 'Vacant Site Register Section 15' was prepared and confirmed that pursuant to site inspection 7<sup>th</sup> January 2019 the site's status and condition was unchanged. The site remained vacant with hoarding erected. The site is in poor visual condition and is causing visual blight on the seafront. It was recommended that a Demand Notice under Section 15 be issued.

4.1.6 A Section 15 Demand Notice for €36,000 was served on both parties dated 9<sup>th</sup> January 2019.

## **5.0 The Appeal**

### **5.1. Grounds of Appeal**

The grounds of appeal can be summarised as follows:

- The appellant purchased the site on or about 28 April 2016.
- The site consists of a number of units and on completion of the purchase a planning application was prepared.
- This application was refused in 2017. This was appealed and granted on appeal in January 2018.
- During this time a number of units were occupied and the last of the units were vacated in or about March 2018.
- It follows that as of January 2018 the appellant was not in a position to commence the development of the site as planning permission had not been granted.
- Receipts and invoices attached to correspondence detail activity on the site, namely preparation works for the commencement of construction.
- It is clear that the site was being used at all times since acquired by the applicant.

- The property does not constitute a vacant site and that the levy imposed should not be required to be discharged.

## 5.2. Planning Authority Response

The response from the Planning Authority is summarised as follows:

- Response outlines details of history associated with the site.
- The appeal documentation makes reference to part of the site being occupied during 2018 (namely Ulysses House). The subject site relates to the brownfield lands south of Ulysses House.
- No response was received detailing occupation of the site.
- While a commencement notice was received in respect of PL.249185 no commencement works have started.
- There are a number of conditions that require agreement prior to commencement of development on the site.
- The carrying out of site 'clean-up' works are not works that require planning permission and do not signal the initiation of development and do not render the site not idle or vacant.
- The site being vacant is causing visual blight and has adverse effects on the visual amenities of the Victorian sea front and character of the area.
- The lands are in a ruinous and neglected condition with the boundary hoarding degrading over the period of inspections between 2016 and 2018.
- Anti-social behaviour is occurring on the site in the form of graffiti and littering.
- It is considered that the site meets the requirements of section 6(6) of the Act.
- It is requested that the Board 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

- With regards to compliance with conditions, Condition 3 is the only condition which the applicant is not in a position to comply with as it requires agreement with Íarnród Éireann whose response is awaited.
- Failure to comply with this condition do not render the site vacant.
- Enabling work has been carried out to activate a permission and as such the site is not idle and it is submitted that the conditions to be met under Section 5(b) (i) cannot be met.
- The Council is aware that an agreement was reached between the appellant and the County Council for use of the site in connection with the Bray Air Show in 2016, 2017 and 2018. This included providing waste facilities to ensure a minimising of littering in the area and for the provision of the lands for the erection of a mast provided by Eir for the air show in 2018.
- The Council has offered no evidence that the requirements of Section 5 (1) (b) (ii) has been met.
- When the property was purchased by the appellant it was on the Derelict Sites register and the appellant took immediate steps to improve the visual aspect of the site.
- The site was subsequently removed from the Derelict Sites register.
- It is therefore submitted that the County Council having inspected and decided to remove the property from the Derelict Sites Register cannot argue that having met the standard set out in the Derelict Sites Act 1990 that the same standard has not been met under Section 6 (6) of the Urban Regeneration Act 2015.
- The appellant regularly carries out inspections of the site and subsequent cleansing works. Photographic evidence is submitted.
- It is requested that the appeal be upheld and the property removed from the said Register.



## 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 1<sup>st</sup> 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 182(2) of the Act does not specify whether the applicant must demonstrate where 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 1<sup>st</sup> 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 of the Act, on Regeneration Land a site is a vacant site if:

- (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. I will address each in turn:

6.4 The planning authority indicate that the last known use on the site was a hotel which following a fire in the late 1990s was demolished. While permission has been secured on site the planning authority stated that there has been no development. I concur with the planning authority in that at time of their initial inspections the site did not have the benefit of planning permission and as such did not have a known use and as such the site or majority of the site would have constituted a vacant or idle site. Of note, at the time of my inspection (2<sup>nd</sup> December 2019), construction works on the permission granted is underway.

6.5 The second requirement is whether 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.

6.6 In this regard I refer to the matters at (ii) above which are to be determined by reference to whether [s.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.

- 6.7 With regard to (a) as there are no structures on site, the relevant test is whether the land in the area were, or are, in a ruinous or neglected condition. In this regard the land currently has hoarding erected around it. It would appear that this hoarding has been erected for some time and as such the land itself is not visible from the public road so as to be described as ruinous or neglected. I also consider that the fact that there are no structures on the land does not in itself result in the land being neglected. I note that the planning authority consider that the hoarding is considered neglected given the deterioration in its condition. At time of inspection, the hoarding was considered to be in good condition. There were no signs of neglect. I note that the hoarding has changed however having regard to the photographic evidence submitted by the planning authority consider that the previous hoarding could not be described ruinous or neglected. Furthermore, construction has also now commenced on site.
- 6.8 With regard to whether anti-social behaviour is or was taking place in the area, the planning authority has included a photo of graffiti on the hoarding. Pursuant to site inspection, I am not convinced that anti-social behaviour was/is an issue; given the presence of the hoarding, access was/is restricted to the site. While there is evidence of some graffiti as submitted by the photographic evidence of the planning authority, it was not visually prominent and would in my opinion, be considered an isolated incident. Furthermore, pursuant to my inspection there was no evidence of such graffiti.
- 6.9 The final test (c) pertains to the reduction in the number of habitable houses or people living in the area and this has not been addressed by either the planning authority or the appellant.
- 6.10 Having regard to the foregoing, while the site could be considered vacant or idle within the meaning of section 5 (1) (b) of the Act at the time of the planning authority's inspections, the land was/is not considered to have an adverse impact on the amenities of the area having regard to section 6(6) of the Act for the reasons outlined above.
- 6.11 The site is no longer vacant as of the 1<sup>st</sup> January 2019  
The appellant has indicated that the subject site is no longer vacant/idle on the basis that site works have occurred which will allow the planning permission to be

implemented. Given that the lands are not considered to have met the test under the definition of regeneration, whether the lands are still considered vacant as of 1<sup>st</sup> January 2019 is not an issue.

**(a) Levy has been incorrectly calculated**

The owners of the site have not contested the findings of the market valuation report which indicates a market value of €1,200,000. Therefore, the demand notice for €36,000 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 1<sup>st</sup> January 2018 and was not a vacant site on 5<sup>th</sup> February 2019, the date on which the appeal was made and 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,
- (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 and

(f) that the land, or majority of the land, does not have adverse effects on the character of the area,

the Board is not satisfied that the site was a vacant site on the 1st of January 2018 and was a vacant site on 5<sup>th</sup> February 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.

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Joanna Kelly  
Senior Planning Inspector

3<sup>rd</sup> December 2019