



An  
Bord  
Pleanála

## Inspector's Report ABP-303648-19

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<b>Type of Appeal</b>	Section 18 Appeal against demand for payment of vacant site levy
<b>Location</b>	Charvey Lane, Rathnew, Co. Wicklow
<b>Planning Authority</b>	Wicklow County Council.
<b>Planning Authority VSL Reg. Ref.</b>	VS/RN/01
<b>Appellant</b>	Blessville Ltd.
<b>Planning Authority Decision</b>	Demand Payment of Levy.
<b>Date of Site Visit</b>	22 <sup>nd</sup> August 2019.
<b>Inspector</b>	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 €19,500 as a levy in respect of a site on the Vacant Sites Register at the Charvey Lane in Rathnew, Co. Wicklow.

## 2.0 Site Location and Description

- 2.1. The site lies c.300m west of the core of the village of Rathnew. It consists of rough grassland between the public road along Charvey Lane and a watercourse to its south. The southern boundary of the site that the council entered on the Vacant Site Register is parallel to the watercourse but does not extend to its banks. The council stated the area of the site to be 1.42ha. Its eastern boundary adjoins the back garden walls and open space of the housing estate of Charvey Court. Its western boundary adjoins the access road to a business park occupied by industrial type buildings. There are some detached 20<sup>th</sup> century houses on the other side of Charvey Lane from the site.

## 3.0 Statutory Context

### 3.1. Urban Regeneration and Housing Act 2015, as amended

- 3.1.1. Section 3 of the site 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 1<sup>st</sup> June 2018 that the site was registered on 1<sup>st</sup> 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.

## 3.2. **Development Plan Policy**

### 3.2.1. **Wicklow and Rathnew Town Development Plan 2013-2019**

- 3.2.2. The southern part of the site along the river is zoned for passive open space under objective POS. The larger part of the site is zoned village centre under objective VC. It is not contiguous with other lands zoned as part of the village centre, with land zoned open space or residential lying between them.

### 3.2.3. **The Wicklow County Development Plan 2016-2022** refers to

- 3.2.4. 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.*

*In terms of Wicklow Town the following zones are included – TC, VC, PT, MU.*

## **4.0 Planning History**

4.1. None

## **5.0 Planning Authority Decision**

### **5.1. Planning Authority Notices**

- 5.1.1. An undated report from the council's planner stated the site was regeneration land. It was used for agricultural purposes. It also 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 area had been identified as an opportunity area in the development plan. It is an objective of the plan that the lands be development as a single comprehensive development. If the site is not in use then it should be brought forward for development.
- 5.1.2. The council issued a notice to Woodwork Group Holdings Ltd under section 7(1) of the 2015 act on 26<sup>th</sup> 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.

5.1.3. The council issued another under section 7(1) of the 2015 act to the appellant on 16<sup>th</sup> August 2017 July stating that it the council 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,

and that the appellant could make submissions on the proposed entry within 28 days and that the submission may include details of land ownership.

5.1.4. A copy of an email from Woodwork Group Holdings Ltd. dated 24<sup>th</sup> August 2017 stating that is on longer owned the site and that the new owner was Blessville Ltd. (the current appellant).

5.1.5. A report from the council planner dated 16<sup>th</sup> November 2017 stated that after the original letter was sent it was advised that the owner of the site was Blessville Ltd. Notices had been sent to that company's address by registered post which was not called for and by ordinary post on 23<sup>rd</sup> August 2017. No response had been received. It recommended that the site be entered on the register.

5.1.6. The council entered the site on the register by order dated 1<sup>st</sup> 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 because the land or structures in the area are in a ruinous or neglected condition.

5.1.7. The council received a valuation report for the site dated 29<sup>th</sup> May 2018 the open market value of the site as €650,000. It issued a notice to the owner on 8<sup>th</sup> August 2018 under section 12 of the act of its determination of the value of the site as €650,000 and that this determination could be appealed to the Valuation Tribunal.

- 5.1.8. The council issued a notice on 1<sup>st</sup> 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. A report from the council's planners dated 5<sup>th</sup> July 2018 stated that no such submissions had been received.
- 5.1.9. On 22<sup>nd</sup> August 2018 the appellant wrote to the council stating that it had made a planning application in respect of the lands which would allow their development and thus removal from the register.
- 5.1.10. The council planner made a report on 10<sup>th</sup> January 2019 that the site remained vacant on 9<sup>th</sup> January with the grazing of a site by a pony not considered to negate the requirement for a levy. Therefore the site remains vacant or idle and was. The report recommended that a demand notice be issued to the owner. On 15<sup>th</sup> January 2019 the council issued a demand for payment under section 15 of the act for €19,500 in respect of the vacancy of the site in 2018.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

The appeal was made on 6<sup>th</sup> February 2019 against the imposition of a levy on the site stating that an application had been made for planning permission on the site. The appellant is also involved in a court case with a person claiming adverse possession of the site. The levy had been incorrectly calculated on a market value for the site that was too high.

### **6.2. Planning Authority Response**

The response from the council states that it has not received any planning application in relation to the site. The owner was given notice of the council's determination of the market value of the site under section 12 of the act on 26<sup>th</sup> July 2018. The Valuation Tribunal has not informed the council of any appeal against that determination. The current appeal is under section 18 where the burden is on the appellant to show that the site was no longer a vacant site on 1<sup>st</sup> January in the year concerned and that the amount of the levy has not been properly calculated. It

cannot be used to appeal the valuation of the site. The levy of €19,500 specified in the notice is 3% of the valuation of €650,000. The site was inspected on several occasions by the council and assessed under sections 5 and 6 of the act. The council is satisfied that it fulfils the tests in those sections. It is over 0.05ha and is vacant. The site being vacant or idle has adverse effects on existing amenities or reduces the amenity provided by existing public infrastructure and facilities or has adverse effects on the character of the area. The site is in a neglected condition in a highly open and prominent location within Rathnew village and there was evidence of ant-social behaviour there. Photos are submitted to support these assertions. The site is a visual blight in the centre of the village disrupting its over appearance and the completeness of its urban form and reducing the residential amenity of the surrounding areas. The council is therefore satisfied that it was a vacant site for the 12 months before its entry on the register and that it continued to be so until at least 1<sup>st</sup> January 2019. The reference to a court case has no bearing on the vacant status of the land. The board should uphold the decision to include the site on the register and to seek payment of the levy.

### **6.3. Further Responses**

The appellant's response to the council's response stated that that it would expand upon the grounds of the appeal in relation to the decision of the council to enter the site on the register. There is no provision in the 2015 act which limits the grounds on which the board can reverse an entry or set aside a notice to that effect. The notices submitted to the appellants were flawed and should be set aside in particular the notice of December 2018. The original letter of August 2017 did not provide any details of the basis on which the council concluded that the site should be entered on the register. It did not state whether the levy was being proposed under section 5(1)(a) or 5(1)(b) of the act. It was not until the submission to the board in February 2019 that the council stated that the test at section 5(1)(b) was being applied. This was a fundamental violation of section 7(1) of the act and prevented the appellant from making a full and proper response to the notice and an appeal against the entry of a site onto the register. The site is not identified for regeneration purposes in accordance with section 3 of the act. The site shown on the map entered on the register includes land zoned passive open space and within a flood zone that would



be not suitable for development and so could not be regarded as vacant. The village centre zoning cannot be regarded as regeneration land as it primarily seeks commercial and retail uses even though residential use is permitted in principle. The photos of small amounts of litter near the fence around the site do not provide evidence of anti-social behaviour. The land use zoning therefore prevents the land from being entered on the register. The map submitted by the council covers an area from Charvey Lane to the stream that is 1.6ha rather than the 1.42ha stated by the council. Therefore either the map or the documentation is in error. The board's decision on case ABP-302783-18 sets a precedent that the boundaries of a site on the register cannot be amended in the course of an appeal, so a defect in mapping means that it should be removed from the register. The board's decision on PL29S.VV0004 sets a precedent that a notice should be cancelled when the council makes procedural errors. A claim of adverse possession has been made against the appellant and so it cannot prepare a planning application for development on the land. A civil judgment such as an entry on the vacant sites register should not be applied while a legal case with the third party is ongoing. Having regard to the foregoing the site should be removed from the register.

## **7.0 Assessment**

- 7.1. 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 board does not have a general power to amend the vacant site register as and when it sees fit. It has no such original jurisdiction. Rather it has a series of particular duties when notices issued by the planning authority are appealed under sections 9, 11 and 18 of the act within the required periods. Appeals were not made against previous notices in relation to the site under sections 9 and 11 in the required periods. The board has no power in any case to revisit the determination of a value of a site by the planning authority under section 12. It would therefore be contrary to provisions of the act to treat the current appeal as having the same effect as appeals under section 9 or 11 of act that were never made in respect of the site or to consider the determination by the planning authority of the value of the site as €650,000 at all. The detailed criticisms of the previous notices issued by the planning authority under sections 7 and 11 of the act are not, therefore, directly relevant to the current appeal. The

board decisions cited in the appellant's response to the council's response to the appeal do not establish any precedent that would indicate otherwise.

7.2. This 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 1<sup>st</sup> January 2019 or 6<sup>th</sup> February 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.

7.3. 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 exiting 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 1<sup>st</sup> January 2019 met the test for a vacant site under section 5(1)(b).

7.4. The site is zoned as part of the village centre for Rathnew. The site is greenfield and does not appear to have previously been subject to urban development. It never previously formed part of the urban core of Rathnew. The village strategy for Rathnew at section 4.3 of the development plan identifies it as an opportunity site for an expansion of the village centre onto new lands. However the Wicklow County Development Plan 2016-2022 has been amended to include policy HD19 which states that all lands zoned town centre may include sites that are in need of renewal and regeneration to which the vacant site levy may be applied. This is stated to include the VC zoning under the Wicklow and Rathnew Development Plan 2013-2019 that applies to most of the current site. Normally only one development plan would be applicable to any one site. However the Wicklow and Rathnew Development Plan 2013-2019 was made jointly by the county and town councils before the latter's dissolution. Therefore its continued effect is subject to the provisions of the subsequent county development plan by virtue of section 11C(a) of the Planning and Development Act 2000, as amended. So the larger part of the site

that is zoned village centre meets the definition of “regeneration land” in section 3 of the act of 2015 because of policy HD19 of the county development plan. However there is a substantial strip in the southern part of the site that is zoned passive open space which does not meet the definition of regeneration land. The entire site is not regeneration land, therefore. The act allows the board to confirm or cancel the entry of the site under section 18, but not to amend its boundaries. This is a similar situation to that which applies to appeals under section 9, as occurred in the case of ABP—302873-18 cited by the appellant. The inclusion within the site of land that cannot be regeneration land would justify the board in exercising its power under section 18 to cancel its entry on the register.

- 7.5. The appeal states that the area of the site is 1.6ha rather than the 1.42ha stated by the planning authority. After examination of the map showing the site entered on the register, I would advise the board that the planning authority’s statement of the area is more accurate.
- 7.6. The site is vacant and idle and the council has stated that it has been so since at least 12 months before it was entered onto the register. The appellant has not sought to contradict those statements. The appellant’s reference to a dispute with a third party regarding a claim of adverse possession would not alter the vacant status of the site and would not justify the cancellation of its entry on the register. It would be inconsistent for a person to seek avoid obligations arising from the ownership of a piece of land on the basis of a claim on the land from a third party while seeking to deny that claim and of any its benefits to a third party. The criterion at section 5(1)(b)(i) for a vacant site in a regeneration area therefore continues to be met.
- 7.7. With regard to the criterion at section 5(1)(b)(ii) elaborated by section 6(6) of the act, I agree with the appellant that occasional littering which is apparent around the edge of the site does not establish that anti-social behaviour is taking place. No other information is before the board to support a conclusion that anti-social behaviour has occurred. The site was not previously subject to development and its vacancy has not reduced the number of houses in the area. Its condition is not ruinous. It might be considered neglected because it is an empty space inside a town. However I would not consider that it is so, because the site is physically separated from the village centre and does not lie along a main street or thoroughfare. Charvey Lane largely serves industrial and warehouse type buildings, along with a suburban

housing estate and some detached houses that look like older ribbon development. In this context the condition of the site as fenced greenfield land does not appear unusually neglected and does not significantly detract from the character of the area. The infrastructure serving the area includes a suburban road and presumably watermains and sewerage. This would not support a conclusion that the vacancy of the zoned part of the site reduces the amenity provided by public infrastructure and facilities to a significant extent. The site does not meet the criterion at section 5(1)(b)(ii) of the act, therefore, and does not constitute a vacant site.

7.8. The value of the site has been determined as €650,000 under the act. The section 15 notice which is under appeal correctly applies a levy for 2018 which is 3% of that figure, which is €19,500. The levy has therefore been correctly calculated in accordance with section 16 of the act.

## 8.0 Recommendation

8.1. 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 1<sup>st</sup> of January 2019 or on 6<sup>th</sup> of February 2019, the date on which the appeal was made, 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.

## 9.0 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 inclusion in the site of lands zoned as passive open space under the Wicklow and Rathnew Development Plan 2013-2019 which do not meet the definition of “regeneration land” set out at section 3 of the act, and

- e) The circumstances of the site as greenfield land at some remove from the rest of the village centre along a minor road surrounded by residential development of a suburban form and commercial development of a functional and extensive form

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 on longer a vacant site on the 1<sup>st</sup> of January 2019 or on the 6<sup>th</sup> of February 2019 the date on which the appeal was made and its entry on the register should be cancelled.

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Stephen J. O'Sullivan  
Planning Inspector

18<sup>th</sup> December 2019