



An  
Bord  
Pleanála

## Inspector's Report ABP-303649-19

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<b>Type of Appeal</b>	Section 18 Appeal against demand for payment of vacant site levy
<b>Location</b>	The Murrough, Wicklow
<b>Planning Authority</b>	Wicklow County Council.
<b>Planning Authority VSL Reg. Ref.</b>	VS/W/06
<b>Appellant</b>	Blessville Ltd.
<b>Planning Authority Decision</b>	Place on Register.
<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 €12,000 as a levy in respect of a site on the Vacant Sites Register at the Murrough, Wicklow.

## 2.0 Site Location and Description

- 2.1. The site lies 0.5km north of the harbour at Wicklow. The shore lies c50m to the east, with a promenade and an area of scrub between them. The street runs along the western side of the site. The stated area of the site is 0.29ha. It is occupied by two functional, flat roofed buildings on its southern part and a walled yard on its central and northern parts . The buildings on the site adjoin another two storey building to the south with a pitched roof and windows that presents a traditional façade to the south. It is in educational use. There is a modern 3 storey office building across the road to its west. Otherwise the plots in the vicinity of the site are occupied by functional buildings with an industrial or storage character similar to the buildings on the site. Footpaths along the street are intermittent. The road surface is in poor condition. The street along the Murrough runs from the harbour past the site to a modern road and bridge to the north which would have significantly improved the access to a previously isolated spit of land between the sea and an inlet along the Leitrim River.

## 3.0 Statutory Context

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

- 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 site is zoned for mixed use under objective MU. It is also part of a designated opportunity area at the Murrough where the plan seeks to facilitate the emergence of a new urban quarter with a distinctive identity and character.

## **4.0 Planning History**

- 4.1. None

## **5.0 Planning Authority Decision**

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

- 5.1.1. A report from the council's planner dated 23<sup>rd</sup> June 2017 stated that the site was vacant or idle although limited information was available that it had been so for 12 months. The vacancy of the site has adverse effects on existing amenities and reduces the amenity provided by existing infrastructure and facilities in the area and

has adverse effects on the character of the area. The enhancement and redevelopment of the Murrough is a key objective of the development plan and if the site is not in use then it should be brought forward for development.

- 5.1.2. The council issued a notice to the appellant under section 7(1) of the 2015 act on 27<sup>th</sup> 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.
- 5.1.3. The appellant responded to the notice on 28<sup>th</sup> July 2017 stating that it had purchased the land on 20<sup>th</sup> October 2016 and that it has been actively seeking a tenant for it since then. It should not be placed on the register.
- 5.1.4. A report from the council planner dated 16<sup>th</sup> November 2017 acknowledged the submission from the appellant but stated that the marketing of the site did not negate the application of the levy under the 2015 act. It recommended that the site be entered on the register.
- 5.1.5. 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 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.
- 5.1.6. The council received a valuation report for the site dated 29<sup>th</sup> May 2018 the open market value of the site as €400,000. It issued a notice to the owner on 26<sup>th</sup> July 2018 under section 12 of the act of its determination of the value of the site as €400,000 and that this determination could be appealed to the Valuation Tribunal.
- 5.1.7. The council issued a notice on 1<sup>st</sup> June 2018 under section 11 of the act to the owner of the site including details of the entry 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.

- 5.1.8. On 22<sup>nd</sup> August 2018 the owner 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.
- 5.1.9. The council planner made a report on 9<sup>th</sup> January 2019 that the site remained vacant and that a demand notice be issued to the owner. On 9<sup>th</sup> January 2019 the council issued a demand for payment under section 15 of the act for €12,000 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 as an application had been made for planning permission on the site and 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 since 1998. 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 €12,000 specified in the notice is 3% of the valuation of €400,000. The site was inspected and assessed under sections 5 and 6 and the council are 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 board should uphold the decision to include the site on the register.

### 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 June 2018. The original notice of July 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. 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 council's response to the appeal did not provide documentary evidence as to the nature, dates and findings of site visits carried out to determine that the site was vacant. It is crucial that such evidence be provided in the interests of fairness and natural justice and in keeping with the 2015 act that such evidence be provided as confirmed in the inspector's report on ABP-302873-18. The board has instructed councils to remove sites from registers in other cases where procedural flaws were found. In 302873 the council had included lands that were in a flood zone and zoned for passive open space and could not be regeneration lands so the council was directed to remove the site from the register. Under PL29E.VV004 the board cancelled the notice of entry on a register of a site in Dublin because the council had incorrectly sought to include it under section 5(1)(a) of the act rather than 5(1)(b), making it clear that where the council had made procedural errors the notice of entry must be cancelled. These precedent cases make it clear that the current appeal should be upheld and the notice of entry onto the register should be cancelled. The appellant also disputes the €400,000 valuation of the site for which the council have not produced evidence. The notices issued by the council therefore suffered from fundamental procedural flaws including the failure to indicate when site visits were carried out to indicate that the site was vacant or idle or how the site value was calculated. The board should therefore remove the site 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 €400,000 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 the site to determine whether it 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. This is consistent with the identification of the Murrough as an opportunity area in the



development plan where a significant improvement in its current character and an intensification in its current use is sought.

- 7.4. The site was vacant and idle at the time of my inspection and reports from the council planner state that it was vacant and idle on 23<sup>rd</sup> June 2017 and 7<sup>th</sup> January 2019. A submission from the appellant to the planning authority dated 28<sup>th</sup> July 2017 implies that the site had been vacant and idle since at least 20<sup>th</sup> October 2016. While the various submissions from the appellant query the bases of the planning authority's conclusion that the site was vacant, at no stage did the appellant contradict that conclusion or actually state that the site was not vacant or idle at any time. There is no record of any application for permission on the site on the planning register. In any event the making of an application or the granting of a permission would not alter the vacant or idle condition of the site unless the permission was actually implemented. The criterion at 5(1)(b)(i) for a vacant site in a regeneration area therefore continues to be met.
- 7.5. There is no indication that anti-social behaviour has occurred in the area at the Murrough or that there has been a reduction in the number of houses or people living to which the vacancy of the site has contributed. The area does not contain ruinous structures, however the land is in a neglected condition with an unsightly character arising from the poor quality of the public realm and of many of the buildings there. The vacancy of the current site contributes to this neglected condition of land in the area. Furthermore accessibility to the Murrough was greatly improved by the construction of the Harbour Access Road and bridge to its north that provided the area and this site with more direct and efficient links to the regional and national road network and which is piece of public infrastructure within the meaning of section 48 of the planning act. This amenity arising from the Harbour Access Road is significantly reduced by the vacancy and idleness of zoned urban land to which it improves the access. The vacancy and idleness of the current site therefore reduces the amenity provided by existing public infrastructure and facilities and has adverse effects on the character of the area. The criterion at 5(1)(b)(ii) for a vacant site in a regeneration area therefore continues to be met.
- 7.6. The value of the site has been determined as €400,000 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 €12,000. 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 confirm that the site was a vacant site as of the 1<sup>st</sup> of January 2019 and was a vacant site on 6<sup>th</sup> of February 2019, the date on which the appeal was made; and that 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; and that the demand for payment of the vacant site levy under Section 15 of the Urban Regeneration and Housing Act 2015 should, therefore, be confirmed.

## 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 vacancy and idleness of the site which contributes to the neglected condition of the area and has adverse effects on the character of the area and reduces the amenity provided by existing public infrastructure and facilities, and
- e) The calculation of the levy for 2018 at 3% of the duly determined site value,

the Board is satisfied that the site was a vacant site on the 1<sup>st</sup> of January 2019 and was a vacant site on 6<sup>th</sup> of February 2019, the date on which the appeal was made, and the amount of the levy has been correctly calculated. The demand for payment of the vacant site levy under Section 15 of the Urban Regeneration and Housing Act 2015 is, therefore, confirmed.

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Stephen J. O'Sullivan  
Planning Inspector

13<sup>th</sup> December 2019