



An
Bord
Pleanála

Inspector's Report

ABP-303754-19

Type of Appeal	Appeal against a Section 18 Demand for Payment
Location	Callan Road, Kilkenny
Planning Authority	Kilkenny County Council
Planning Authority VSL Reg. Ref.	VSR18-18
Site Owner	Monsignor Michael Ryan
Planning Authority Decision	Demand for Payment
Date of Site Visit	17 th April 2020
Inspector	Erika Casey

1.0 Introduction

- 1.1. This appeal refers to a Section 15 Notice of Demand for Payment of Vacant Site Levy issued by Kilkenny County Council, stating their demand for a vacant site levy for the year 2018 amounting to €8,250 for a site located in Castlecomer, Co. Kilkenny (VSR18-18).
- 1.2. The appeal site has one stated registered owner, Monsignor Michael Ryan.

2.0 Background

- 2.1 The Notice of Proposed Entry on the Vacant Sites Register was issued to Monsignor Michael Ryan on the 3rd of November 2017. On the 7th December 2017, the Notice of Entry on the Vacant Sites Register was issued to Monsignor Michael Ryan. No appeal was made in respect of the Notice of Entry on the Vacant Sites Register.
- 2.2 A valuation pertaining to the site was issued by Kilkenny County Council on the 22nd of May 2018 under Section 12(4) of the Urban Regeneration and Housing Act 2015. The value of the site was determined to be €275,000. A further notice pursuant to Section 11(1) of the Urban Regeneration and Housing Act 2015 was issued on the 29th of May 2018.
- 2.3 A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to Monsignor Michael Ryan on the 24th of January 2019 for the value of €8,250. The appellants have appealed the Demand for Payment Notice issued pursuant to Section 15 of the Urban Regeneration and Housing Act.

3.0 Site Location and Description

- 3.1 The subject site with an area of 2.24 is located to the south west of the town centre. It comprises an undeveloped greenfield site. The Castlecomer Community School and associated grounds is located to the west. There are further undeveloped lands to the north and the south. To the east, is a graveyard. An access road serving the graveyard runs along the eastern boundary of the site.

4.0 Statutory Context

URH ACT

- 4.1 The Notice issued under Section 7(1) of the Act states that the PA is of the opinion

that the site referenced is a vacant site for the following reasons:

1. The site is zoned in the Castlecomer Local Area Plan to accommodate residential development,
2. The site is situated in an area in which there is a need for housing,
3. The site is suitable for the provision of housing, and
4. The site, or the majority of the site, is vacant or idle.

4.2 These provisions relate to Section 5(1(a)) of the Act. Section 5(1)(a) of the Act as amended by Section 63 of the Planning and Development (Amendment) Act 2018 states that a site is a vacant site if in the case of a site consisting of 'residential land':

(i) The site is situated in an area where there is a need for housing,

(ii) The site is suitable for the provision of housing and

(iii) The site, or the majority of the site, is vacant or idle or

(II) being used for a purpose that does not consist solely or primarily of the provision of housing or the development of the site for the purpose of such provision, provided that the most recent purchase of the site occurred

(A) after it became residential land, and

(B) before, on or after the commencement of section 63 of the Planning and Development (Amendment) Act 2018.

4.3 The Act defines 'residential' land at Section 3 as follows:

"residential" land means land included by a Planning Authority in its development plan or local area plan in accordance with section 10(2)(a) of the Act 2000 with the objective of zoning for use solely or primarily for residential purposes, and includes any structures on such land."

4.4 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 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.

5.0 Development Plan Policy

Castlecomer Local Area Plan 2018-2024

5.1 The current operative development plan is the Castlecomer Local Area Plan 2018-2024. This plan took effect on the 16th of April 2018. The site is zoned “Low Density Residential”. It is stated in the plan:

“This zoning allows for new residential development at a lower density and services incidental thereto. This zoning reflects the historic densities which exist away from the town centre. While housing is the primary use in this zone, childcare facilities, nursing homes, independent/semi-independent living units for older people and recreation can also be considered.”

There is also a roads objective pertaining to the site.

5.2 Section 4.4 of the plan addresses the vacant site levy. It states:

“This Plan will encourage and facilitate the appropriate development of sites and areas in need of development and renewal in order to prevent:

Adverse effects on existing amenities in such areas, in particular as a result of:

- *The ruinous or neglected condition of any land*
- *Urban blight or decay*
- *Anti-social behaviour, or*
- *A shortage of habitable houses or of land suitable for residential use or a mixture of residential and other uses*

For the purpose of the vacant sites levy the following zoning will be considered for the purpose of the act in accordance with the County Development Plan:

- *General business, mixed use, industrial and community facilities for regeneration purposes.*
- *All residential zonings for residential purposes”*

5.3 Objective **EDR 5** states:

“to identify the individual vacant sites in the town for regeneration and housing and establish and maintain a register of vacant sites (entitled the vacant sites register) in

the plan area for the purpose of the Vacant Site Levy (Urban Regeneration and Housing Act 2015)."

5.4 The following objectives are also of relevance:

HCDMS 2: *To promote the sustainable development of vacant residential and regeneration sites in Castlecomer through the application of the Urban Regeneration and Housing Act 2015, Vacant Site Levy, on lands zoned 'Mixed Use', 'General Business' and 'Residential'.*

HCDMS 3: *To apply the provisions of the Derelict Sites Act 1990 and the Urban Regeneration and Housing Act 2015 in securing the regeneration of derelict and vacant sites which are detracting from the amenities of Castlecomer.*

Castlecomer Local Area Plan 2009

5.5 It is noted that the operative plan in place when the site was entered onto the Vacant Site Register was the 2009 Castlecomer Local Area Plan. Under the 2009 plan, the site was zoned Residential. There are no objectives or policies pertaining to the Vacant Site levy in the 2009 plan.

6.0 Planning History

6.1 There is no planning history relating to the subject site. Permission was granted in January 1999 for 12 houses on the site to the immediate site under application reference 98/441.

7.0 Planning Authority Decision

Planning Authority Reports

7.1 A Vacant Site Report (17.10.2017) was prepared for the site outlining the date of the site visit (07.04.2017), zoning, and the type of site for the purposes of the Act which in this case is 'Residential' land. It is stated that the site is suitable for housing and is located in an area in need of same. Having regard to the above criteria and information, it is considered that the site should be included on the register.

7.2 A further Vacant Site Report was prepared on the 5th of July 2018 in response to a submission made by the landowner on the 27th of June 2018. This noted:

- A further site inspection was carried out on the 3rd of Jul 2018.

- Until the site is actually brought into active use, it remains a vacant site under the legislation.

8.0 The Appeal

8.1 Grounds of Appeal

8.1.1 An appeal prepared by Castlecomer Parish Finance Committee was lodged to the Board on the 21st of February 2019. The grounds of appeal can be summarised as follows:

- The site is in the ownership of the parish of Castlecomer. The lands are on very difficult terrain and not readily developable.
- The lands have been offered to the Cheshire Homes and the Council for social housing and have been declined.
- Access to the lands is limited and not readily available without costly accommodation works.
- The lands are difficult to develop and no developer has expressed any interest in the lands.
- The levy is gross and an imposition on the Parish Finances.
- The Parish is in the process of engaging an auctioneer and so far there has been no demand for this site.

8.2 PA Response

- Until the site is brought into active use, it remains a vacant site under the legislation.
- Contend that the site is suitable for the provision of housing by reference to section 6(5) of the Act. The site is zoned as Low Density Residential in the Castlecomer LAP 2018. The site is served by public infrastructure and facilities necessary to enable housing to be provided and serviced. Permission was granted on the adjoining site in 1999 for 12 houses.
- The site slopes from east to west with a level difference of 12m across the width of a 7.5% slope for the site. This is not considered excessively difficult terrain.
- The Council has an ongoing social housing project in Castlecomer and was not interested in acquiring additional land in Castlecomer at that time.

9.0 **Assessment**

9.1 This appeal relates to a Section 15 Demand for Payment. In accordance with the provisions of the legislation there are 2 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 of these in turn.

The site is no longer vacant

9.2 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) (a) 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 of January 2019.

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

Is it a Vacant Site

9.4 Section 5(1)(a) of the Act sets out the criteria for a vacant site consisting of 'Residential' land. By reference to the Planning Authority notice, the subject site comprises 'Residential' land for the purposes of the Vacant Site Levy. The subject site is located in an area zoned 'Low Density Residential'. This assessment takes into account the characteristics of the site in the context of Section 5(1)(a) residential land.

The Need for Housing in an Area

9.5 This it to be determined by reference to section 6(4) of the Act

- (a) The housing strategy and the core strategy of the Planning Authority.
- (b) House Prices and the cost of renting houses in the area.
- (c) The number of houses qualified for social housing support in accordance with section 20 of the Housing (Miscellaneous Provisions) Act 2009 and that have specified the area as an area of choice for the receipt of such support and any

changes to that number since the adoption of the Planning Authority's development plan.

- (d) Whether the number of habitable houses available for purchase or rent was less than 5% of the total number of houses in the area.

9.6 I have reviewed the reports submitted by Kilkenny County Council with respect the subject vacant site. It is stated that the site is situated in an area in which there is a need for housing. I note however, that there is no other information on the file to support this contention in accordance with the criteria set out under section 6(4) of the Act. Whilst the PA may have prepared more detailed information regarding housing need in the County to support the entry on the vacant site register, this information is not before me and in the absence of same, I cannot determine this issue further. The Board may wish to consider requesting such information from the PA to assist in their determination of this appeal. However, it should be noted, I consider that there is a procedural error with the notice which I will address further below.

Suitability of the Site For Housing

9.7 Suitability of the site for housing is to be determined by reference to Section 6(5) of the Act

- (a) the core strategy,
- (b) whether the site was served by the public infrastructure and facilities (within the meaning of section 48 of the Act 2000) necessary to enable housing to be provided and serviced, and
- (c) whether there was anything affecting the physical condition of the lands comprising the site which might affect the provision of housing.

9.8 Under the Core Strategy, it is proposed that the population of the town should grow by 207 people to 2023. It is anticipated that 111 housing units will be required up to and including the end of 2023. The site is located within the existing urban area and is served by existing infrastructure.

9.9 The appellant contends that the site is difficult to develop due to poor access and an elevated topography. Whilst the significant topographical variation across the site is noted, I do not concur that this would necessarily be an impediment to the

development of the site for a housing development. There is an existing agricultural access to the site. I am satisfied that there is nothing affecting the physical condition of the lands which might affect the provision of housing.

9.10 The appellant also highlights difficulties in disposing of the site and that it is their intent to engage an Auctioneer to sell the lands. There is however, no provision in the legislation to prohibit the entry of a vacant site onto the register on the basis that a planning application for their future development may be progressed. The 2015 Act is only concerned with the actual use on site and whether it is performing a specific purpose in order to determine if a site is vacant/idle. In this instance, the site is clearly vacant at present.

Vacant or Idle

9.11 The definition of vacant or idle as it relates to residential land states that the site, or the majority of the site is:

- (I) vacant or idle
- (II) being used for a purpose that does not consist solely or primarily of the provision of housing or the development of the site for the purpose of such provision, provided that the most recent purchase of the site occurred
 - (A) after it became residential land, and
 - (B) before, on or after the commencement of section 63 of the Planning and Development (Amendment) Act 2018.

The Site was Vacant or Idle

9.12 From the documentation on the file, I am satisfied that at the time the notice of entry was made, the site was idle. The site was an undeveloped greenfield site.

12 Month Period

9.13 The Board may wish to note that the entry of a number of sites in Kilkenny onto the Vacant Site Register have been canceled on appeal due to procedural issues and specifically to the relevant time period. The 2015 Act (as amended) requires the Board on appeal to look at the past condition of the site and determine if the site was vacant or idle. Section 9 states:

(2) On an appeal under this section the burden of showing that the site was not a vacant site for the duration of the 12 months concerned is on the owner of the site.

(3) Where the Board determines that a site was not a vacant site for the duration of the 12 months concerned or was no longer a vacant site on the date.

9.14 The relevant time period for this appeal extends 12 months back from the date on which the site was entered on the register, in this instance the 7th of December 2017. I note that the Planning Authority have stated that the site has been vacant for the duration of 12 months and I also note a site inspection date of the 14th of March 2017. Whilst a second site visit was undertaken on the 3rd of July 2018, this occurred after the entry of the site onto the register.

9.15 The relevant time period is a very important factor and one upon which the 2015 Act is quite plain in its interpretation, section 6(2) states as follows:

“A 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.”

9.16 The Planning Authority should provide a clear chronology to confirm site visits and provide a definitive assessment of the duration of twelve months. In this instance, the Planning Authority have not adequately accounted for the duration of the twelve month period. It is likely at the time the site visit was undertaken by the PA that the site had been inactive or idle for the relevant time period, but it is not clear from information presented by the Planning Authority that the relevant time period had elapsed and the condition of the site cannot be fully understood without doubt.

9.17 Even though it is likely and probable that the lands had been vacant or idle for the relevant time period, I cannot be certain. For this reason alone the site should be removed from the register. This does not preclude the Planning Authority from recommencing the process and implementing the 2015 Act in terms of allowing the relevant 12 month time period to elapse.

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

9.18 .At the time of my site visit, it was noted that the site remains vacant and idle and no development has commenced.

Levy Calculation

- 9.19 A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to Monsignor Michael Ryan on the 24th of January 2019 for the value of €8,250. The site was valued at €275,000.
- 9.20 The levy rate applicable in this instance is 3%. It is evident, therefore, that the levy calculation has been correctly calculated.

Other Matters

- 9.21 Section 28 of the Act amends section 10(2) of the Act to require a mandatory objective in development plans to support regeneration. Circular letter PL 7/ 2016 provides the following guidance:

“As part of the Urban Regeneration and Housing Act 2015, section 10(2)(h) of the Planning and Development Act 2000, as amended, has been further expanded – see Appendix 1 for further elaboration. This section of the Planning Act requires a mandatory objective to be included in a development plan to support urban regeneration. In light of this revision, planning authorities are required to examine their current development plans with a view to ensuring that the revised requirements of section 10(2)(h) have been integrated into their development plans. In this regard and as part of this examination, planning authorities should in the first instance provide for the development of vacant sites in designated areas (“residential land” and/ or “regeneration land”) as an explicit objective in their development plans or local area plans, supporting their core strategies in their development plans. This is to give a clear foundation to the fair and equitable application of the levy in their respective functional areas.

The areas designated in a development plan or, where appropriate, a local area plan for the purposes of the levy can be indicated by –

(i) designating specific “residential land(s)” in areas zoned primarily as residential or specific “regeneration land(s)” in areas zoned primarily for regeneration as areas in which the levy can be applied on vacant sites in those areas, or

(ii) designating all lands in an area which are zoned for residential or regeneration uses as areas in which the levy can be applied on vacant sites.”

- 9.22 It is further stated that a Planning Authority may choose the most appropriate plan

for identifying areas to which the vacant site levy will apply - County/City Plan or Local Area Plan. However, the County/City Plan must clearly articulate policy relating to the revised section 10(2)(h). In summary, the Planning Authority shall include objectives in its development plan for the development and renewal of identified areas in need of regeneration or residential development. It will be a matter for the elected members to identify and incorporate those areas in their development plan or local area plan. Only vacant sites and structures located in those areas, as incorporated in the development plan, can be placed on the vacant site register and be liable for the levy.

9.23 I have reviewed the statutory development plan for the area when the site was entered on the register which was the Castlecomer Local Area Plan 2009. I have also reviewed the Kilkenny County Development Plan 2014-2020. There is no reference to sites or zoning objectives to which the vacant site levy is applicable in the LAP or the County Plan. I note that the 2018 Castlecomer LAP does include references to the vacant site levy and that it is applicable to residential lands. This LAP however, was not adopted at the time the site was entered onto the register.

9.24 I note however, that notwithstanding the guidance set out in the Circular, Section 3 of the Urban Regeneration and Housing Act 2015, defines 'residential' as follows:

“residential land” means land included by a planning authority in its development plan in accordance with section 10(2)(a) of the Act 2000 with the objective of zoning for such use or primarily for residential purpose, and includes any structures on such land.”

9.25 In this instance, the subject site is zoned 'Low Density Residential'. On balance, notwithstanding the absence of a site specific reference in the Local Area Plan or Development Plan, I am satisfied that as the lands are zoned 'Residential' in accordance with section 10(2)(a) of the Act that the vacant site levy can be applied to the subject lands.

10.0 Recommendation

10.1 I recommend that in accordance with Section 18 (3) of the Urban Regeneration and Housing Act 2015 (as amended), the Board should cancel the Notice of Demand for Payment of Vacant Site Levy as the site was not a vacant site as of the 1st of January 2019 and was not a vacant site on the 21st of Feb 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. 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.

11.0 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 Planning Inspector,
- (d) The recorded date of the site inspection, (14.03.2017) provided by the Planning Authority in its submitted documentation and the absence of sufficient evidence to support the contention of the Planning Authority that the site was vacant and idle for the period of 12 months preceding the date of placing the site on the register,
- (e) The absence of documentation to support the contention that there is a housing need in the area,

the Board is not satisfied that the site was a vacant site on the 1st of January 2019 and was a vacant site on 21st of 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.

Erika Casey

Senior Planning Inspector

17th April 2020