



An
Bord
Pleanála

Inspector's Report ABP-303769-19

Type of Appeal	Appeal against a Section 18 Demand for Payment.
Location	Clover Meadows, Ferrybank, Co. Kilkenny.
Planning Authority	Kilkenny County Council.
Planning Authority VSL Reg. Ref.	VSR/22.
Site Owner	Michael Doyle.
Date of Site Visit	05 December 2019.
Inspector	Stephen Rhys Thomas.

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 €27,000 for a site at Clover Meadows, Ferrybank, Co. Kilkenny and identified as VSR18-22.

2.0 Site Location and Description

- 2.1. The appeal site is large and irregular in configuration, located east of Waterford City at Ferrybank in County Kilkenny. The lands abut an existing housing estate, Clover Meadows and the rear of single dwellings along the R711. The site is accessed from Clover Meadows and also has frontage to the R711. A portion of the overall site itself is in use as public open space and marginal planting, these areas are well maintained and in use. This majority of the site is mostly overgrown with colonising vegetation and shows signs of excavation and possible spoil heaps.

3.0 Statutory Context

3.1. Urban Regeneration and Housing Act 2015 (as amended).

- 3.1.1. The site was entered onto the register subsequent to a Notice issued under Section 7(1) of the Act that stated the PA was of the opinion that the site referenced was a vacant site within the meaning of Section 5(1)(a) and 5(2) of the Act. The 7(1) Notice was issued 3 November 2017. The site was subsequently entered onto the register 7 December 2017.
- 3.1.2. 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 to the Board within 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.

3.2. Development Plan Policy

- 3.2.1. The **Ferrybank Belview LAP 2017** is currently the operative development plan. The site is located on lands that are subject to zoning R3 – Residential. This zoning allows for new residential development and other services incidental to residential development and reflects the densities which exist in existing housing developments at these locations. While housing is the primary use in this zone, childcare facilities and recreation will also be considered.

Section 4.5 Vacant Sites Levy

The Urban Regeneration and Housing Act 2015 introduced a Vacant Sites Levy as a site activation measure to ensure that vacant or underutilised land in urban areas is brought into beneficial use. This Plan will promote, 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

The levy can be applied on land designated as either “residential” or “regeneration”. For the purposes of implementing the levy, the following zones are designated:

Residential: Residential Arcadian, Residential Low Density, Residential, Protect and Enhance Existing Residential Amenity.

Regeneration: Urban Village, Business Industry and Technology Parks

These zones will be examined to determine if there are sites where the Vacant Site Levy is applicable under the provisions of Urban Housing and Regeneration Act 2015 and all associated regulations and guidance.

- 3.2.2. The operative plan at the time the site was placed on the register was the Ferrybank Belview Local Area Plan 2009 – the lands were zoned residential (medium density)

4.0 Planning History

4.1. Subject site

PA ref **19730** - 98 no. residential units. No decision.

Wider site

PA ref **10631** - Extension of Duration of Planning Permission Ref. P.05/1351.

PA ref **051351** – Permission for 168 houses.

PA ref **03760** – permission for a mixed development and site development works on a 25.55 ha site, 694 residential units and neighbourhood centre.

5.0 Planning Authority Decision

5.1. Planning Authority Reports

- 5.1.1. Register of Vacant Sites Report (first report – 17 October 2017) - The site is zoned Residential (Medium Density) in the Ferrybank Belview Local Area Plan 2009. The site is classified as residential land and has been vacant or idle for the last 12 months. Recommendation to issue 7(1) Notice.
- 5.1.2. Response to submission report (second report – 4 December 2017) - The site is zoned Residential (Medium Density) in the Ferrybank Belview Local Area Plan 2009. The site remains a vacant site, should matters change, the site can be removed from the register. Recommendation to issue 7(3) Notice.

5.2. Planning Authority Notices

- 5.2.1. Kilkenny County Council advised the site owner that the subject site (Planning Authority site ref. VS18-22) is now liable for a payment of 3% of its valuation. The site is valued at €900,000 and hence the levy for 2018 is €27,000. Payment terms and methods are outlined.
- 5.2.2. A Section 11(1) Notice issued on the 29 May 2018, advising the owner of the site's valuation, the charge to be levied and to invite the owner to make further submissions with respect to the placement of the site on the register, accompanied by a map with two separate sites outlined.

- 5.2.3. A Section 12(4) Notice issued on the 22 May 2018, advising the owner of the site valuation and instructions to make an appeal to the Valuations Tribunal, accompanied by a map with two separate sites outlined.
- 5.2.4. A section 7(3) Notice issued on the 7 December 2017, advising the owner that their site had been placed on the register.
- 5.2.5. A section 7(1) Notice issued on the 3 November 2017, advising the owner that their site had been identified as a vacant site and invited submissions, accompanied by a site map.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The landowner has submitted an appeal to the Board, against the decision of Kilkenny County Council to retain the subject site on the Register. The grounds of the appeal can be summarised as follows:

- Notices - The appellant points out that the map that delineates the lands subject to the levy differ from notice to notice. Specifically, the map attached to the Notice of the 29 May is different to the map attached to the original Notice of the 3 November. In addition, two separate vacant site notices stapled together were sent in the same correspondence and were temporarily mislaid by the appellant.
- Levy process – the appellant states that during the site registration process they were also heavily engaged in the process of making submissions during the drafting of the LAP for the area. To the extent that the landowner's proposition to rezone lands to facilitate phasing were accepted and incorporated into the draft plan. The site's inclusion on the register was premature because they had agreed a phased approach to developing the lands. In addition, the appellant sets out a detailed and lengthy engagement process with the Council in terms of developing masterplans, identifying and designing new roads and other infrastructure. It is this ongoing and detailed engagement with the Council that the appellant feels that a levy should not be charged.

The appeal is supported by a copy of the section 15 Notice and other notices issued by the Council, a copy of the submission letter regarding the Council Notice stating an intention to place the site on the register, the response of the Council and a counter response from the appellant, and a copy of a correspondence to the Council concerning zoning changes to the draft LAP for the area.

6.2. Planning Authority Response

There are differences in the mapping. The map detailed with the section 7(1) aligned with the zoning pertaining at the time. Due to material amendments to the Ferrybank LAP, the section 11(1) and 12(4) Notices included revised maps to align with zoning. The map attached to the demand for payment is the same as the section 11(1) and 12(4) maps, to which no appeal was lodged.

The original section 7(1) Notice included lands that were zoned in the draft Ferrybank LAP 2017, the additional parcel of land adjacent to the old railway line was proposed to be strategic reserve. Due to submissions made by the owner, these lands were subsequently zoned residential in the adopted plan of December 2017. In any case the lands were zoned residential in the previous plan. In terms of masterplan, roads and phasing mentioned by the appellant, these are discounted and there is no impediment to developing the lands.

6.3. Further Responses

The appellant has responded to the Council's submission by reiterating their previous concerns. However, the appellant amplifies their issue in relation to mapping and the administrative error of issuing two separate vacant site notices sent together which hampered any attempt to appeal same.

The inclusion of the wider site at earlier phases of the registration process and the ongoing drafting of a new LAP reinforces the appellant's claims that inclusion of the site on the register was premature.

The appellant has included a package of detailed drawings to show how a masterplan exercise for the area has evolved over time and that under the advice of the Council withheld a planning application until all high-level planning exercises were complete.

The appellant disagrees that the site is suitable for housing as the wider picture of roads infrastructure has not been settled. Without knowing the final masterplan vision for the area, it would be piecemeal development to build out on the current site.

7.0 Assessment

7.1. Introduction

7.2. 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.

7.3. The site is no longer vacant

7.3.1. 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 just 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 in the year concerned, in this case 2018.

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

7.4. Is it a Vacant Site?

7.4.1. 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 notices, it is stated that the subject site comprises 'Residential' land for the purposes of the Vacant Site Levy. The subject site is located in an area subject to zoning objective Residential (medium density). This assessment takes into account the characteristics of the site in the context of Section 5(1)(a) residential land.

7.5. The need for housing in an area

7.5.1. The need for housing is determined by section 6(4) of the 2015 Act and with reference to the following:

- (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 households qualified for social housing support in accordance with section 20 of the Housing (Miscellaneous Provisions) Act 2009 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, and*
- (d) whether the number of habitable houses available for purchase or rent was less than 5 per cent of the total number of houses in the area.*

7.5.2. The planning authority have not provided any detailed assessment of the criteria set out by section 6(4) and the landowner has not challenged the matter of housing need. On balance, the lands are zoned for residential purposes in accordance with the core strategy of the Plan in order to provide residential units. In addition, there is a history of residential permissions on the lands and a current application pending. I am satisfied that there is therefore a need for housing in the area.

7.6. Suitability of the site for housing

7.6.1. The suitability of a site for housing is determined by section 6(5) of the 2015 Act and with reference to the following:

- 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 of 2000) necessary to enable housing to be provided and serviced, and*
- (c) whether there was any thing affecting the physical condition of the land comprising the site which might affect the provision of housing.*

7.6.2. In this instance the planning authority state that the lands are zoned for housing and infrastructure is in place to accommodate development. The appellant disputes this and states that the development of the lands is dependant on a wider master planning exercise. This masterplan exercise has been carried out and refined during

and after the drafting of a new LAP for the area. A process that the appellant has extensively described their initial and ongoing involvement and collaboration with the Council. The lack of roads infrastructure and a finalised route of a road network has been raised as a sticking point.

7.6.3. Whilst I agree that the best approach to the development of an area is through extensive and well researched forward planning exercises, plans and masterplans, the site in question is not limited in this respect. The site has had the benefit of residential zoning since the previous LAP, is zoned again in the current LAP and has also had the benefit of a number of planning permissions in the past. A factor the appellant has not mentioned. The site that is the subject of this appeal is adjacent to the R711 and Clover Meadows an access road to an existing housing. I do not see how the site in question could not have been developed in the past and I do not agree with the appellant when they maintain that there were forward planning obstacles in the way to making and lodging a planning application for residential development. From a glance at the Council's planning register and site notice, I do note, that there is a current planning application lodged on the site for 98 residential units. I am satisfied that the site was and is suitable for housing.

7.7. Vacant or Idle

7.7.1. The definition of vacant or idle as it relates to residential land is as follows:

(iii) the site, or the majority of the site is —

(I) 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.]

7.7.2. The landowner passes no comment in relation to the use of the site. The planning authority in their reports simply state that the site was vacant. The status of the site for the relevant time period is reliant on the cursory observations made by the planning authority that the majority of the site was idle for the period of twelve

months preceding the date of entry on the Register. On the date of my site visit, I observed that the majority of the lands comprised waste ground with no apparent use or purpose. Incidentally, I do note that a minor section of the site is well maintained and used as public open space. The planning authority state that the lands were vacant for the 12 months concerned, yet the dates of their initial and second reports are dated 17 October 2017 and 4 December 2017 respectively. I would alert the Board to other VSR appeals in the functional area of Kilkenny County Council, where vacant sites were removed from the register because accounting for the 12 month period was not adequately demonstrated. This is also the case in this instance, the 12 month time period is not accounted for. I could logically assume that the majority of the site was waste ground and thus a vacant site but I have no information to sustain such an assumption. There is no information forthcoming in relation to the use of the lands for the relevant period other than a statement from the planning authority that is not supported by site inspection reports with relevant dates. I cannot draw a definitive conclusion that the site was indeed vacant and waste ground, likely as this may be. It is this lack of information and adherence to a robust reporting procedure that the site, perhaps should have been removed from the register in the very first instance if an appeal were lodged. I do not however, intend to advise the Board to remove the lands from the register on these grounds.

7.7.3. Turning to section 18 of the 2015, the owner is required to demonstrate that the site was no longer a vacant site on 1 January in the year concerned. In brief, the year concerned is 2018, the appellant has advanced no such use or purpose for the lands concerned. This lack of a use is borne out by my observations of the site, the majority of which is waste ground. The appellant has put forward a notion that all of the administrative activity and ongoing engagement with the planning authority in relation to the draft LAP and the creation of a draft masterplan may constitute a use for the site. This is not the case and the act does not indicate that such activity constitutes an actual use for the site.

7.7.4. For the purposes of a section 18 appeal, the underlying fact is that the majority of the lands were a vacant site on the 1st of January 2019 and was a vacant site on 21st of February 2019, in accordance with section 5(1)(a)(iii)(l) of the 2015 Act. Based upon the information provided by the planning authority and my own observations, I am

satisfied that nothing has occurred on site in terms of use and the site remains vacant.

7.8. Levy Calculation

- 7.8.1. A 'Demand for payment of Vacant Site Levy' was issued to Mr. Michael Doyle on the 24 January 2019 stating that the valuation placed on the site is €900,000. The levy rate applicable in this instance is 3% and amounts to €27,000 and this calculation has not been appealed. It is evident, therefore, that the levy calculation has been correctly calculated.
- 7.8.2. Though, the calculation of the levy is mathematically correct, I am not satisfied that the correct site area has been used. Confusingly, both the later section 11(1) and section 12(4) Notices are accompanied by maps that show additional lands with the identifier VSR22 and show a hectarage, possibly for the two none contiguous sites. The site outlined on the section 7(1) Notice (no map appears to accompany the 7(3) Notice) only shows a single parcel of land at the junction of the R711 with Clover Meadows. The planning authority acknowledge the existence of two different maps and relate this to a change in zoning from one LAP to another and the valuation of the site. In summary, I am to understand that the site has enlarged significantly since the first notice received by the appellant and I cannot be certain to the site's extent now being levied as no map accompanied the 'demand for payment' notice. This has consequences for the valuation of the site as it depends which site is to be levied, the smaller or larger site?
- 7.8.3. In my mind the calculation of the levy to be charged has been made on a false premise, i.e. the larger combined site area and so the amount of the levy has been incorrectly calculated in respect of the site shown in the section 7(1) Notice. The appellant has made this point in their grounds of appeal and I agree, the demand for payment is not consistent with section 18(2)(b) of the 2015 Act.
- 7.8.4. The planning authority have not provided a site valuation for the smaller site and the correct calculation of the levy by the Board cannot be provided in accordance with section 18(4) of the 2015 Act, as follows:

Where the Board determines that the amount of the levy has been incorrectly calculated in respect of a vacant site it shall give written notice to the planning

authority of the correct amount who shall amend the demand made in respect of that year in accordance with the revised amount.

7.8.5. I have no information concerning the valuation of the original section 7(1) Notice map outline and therefore cannot provide a revised amount of levy to be charged.

7.9. Procedural Issues

7.9.1. The appellant has raised an issue about receiving two different vacant site Notices by post and in the same envelope. A seemingly minor issue and one which appears to have not been satisfactorily settled. In the first instance a submission was made in relation to the section 7(1) Notice. However, once the section 7(3) Notice was issued it appears that no appeal was made by the owner. In addition, once the section 11(1) Notice was issued, again it appears no submission was lodged with the planning authority and consequently no appeal was made to the Board. The planning authority state that the correct process was followed in the service of the notices and they cannot take into account administrative filing errors on the part of land owners, I tend to agree. I am satisfied that the relevant Notices have been served correctly, as shown by the current appeal and the submission made after the service of the section 7(1) Notice.

7.9.2. Concerning the mapping of VSR18-22 (VSR22), in the first instance, the section 7(1) Notice delineates a single entity adjacent to Clover Meadows. It is this site that the initial submission to the planning authority was made by the appellant. The planning authority indicate that the reason for the enlargement of the site area from the section 7(1) map to the section 11(1) and 12(4) maps was to include lands now zoned in the current LAP. This makes sense, but due to the lack of any submissions or appeals to the section 11(1) or 12(4) Notices, I am concerned the owner has been prevented from full engagement with the registration process. That point aside, I am also concerned that VSR22 has enlarged considerably since the section 7(1) Notice, this has implications for the site valuation. In turn, an increase in site area and logically the site value may impact upon the charge levied.

7.9.3. In relation to the procedures employed in the placement of the lands on to the register, I am not satisfied that the Board can confirm matters on a vacant site, the area and extent of which is not fully known. It is for this apparent mapping inconsistency that the site should be removed from the register.

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 should cancel the Notice of Demand for Payment of Vacant Site Levy as the Board cannot confirm the extent and area of the vacant site and consequently that the amount of the levy has been correctly calculated in respect of the vacant site. The demand for payment of the vacant site levy under Section 15 of the Urban Regeneration and Housing Act 2015 is, therefore, cancelled.

9.0 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 site outline maps that accompany the Notices issued by the planning authority are inconsistent and show different site areas. The extent of the vacant site cannot be determined and consequently the charge to be levied cannot be confirmed,

given that two different site outlines accompanied the Council's Notification to Enter on the Vacant Sites Register, Determination of Market Value and the Notification that the Site Stands on the Register, all with the same Vacant Sites Register number, the Board cannot be satisfied as to the valuation placed on the smaller site for the period concerned or which is the site that is the subject of the appeal.

Stephen Rhys Thomas
Senior Planning Inspector

12 December 2019