



An
Bord
Pleanála

Inspector's Report ABP-303850-19

Type of Appeal	Appeal against a Section 18 Demand for Payment.
Location	Site at Ballyvoloon, Cobh, County Cork.
Planning Authority	Cork County Council.
Planning Authority VSL Reg. Ref.	VS0018.
Site Owner	Paul Damery.
Date of Site Visit	15 May 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 Cork County Council, stating their demand for a vacant site levy for the year 2018 amounting to €360 for a site with a Folio reference of 139182F at Ballyvoloon, Cobh, County Cork (VS0018).

2.0 Site Location and Description

- 2.1. The subject site is located within the environs of Cobh in County Cork. The infill site is located along the northern fringes of Cobh, with residential development to all sides.
- 2.2. The site has a curving frontage to the public road along its western boundary and fronts onto a laneway to the rear of Maurice Moore Place to the south. The eastern boundary is defined by the rear boundary walls of housing along Coolamber Drive and the northern boundary comprises hedgerow boundaries to single houses. The site is gently sloping and overgrown with long grass and clumps of furze. The western and southern boundaries are composed of hedgerows with mature trees. The site the subject of this appeal comprises a small rectangular portion to the north eastern corner of the overall site.

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 21 November 2017. The site was subsequently entered onto the register 1 January 2018.
- 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 Cork County Development Plan 2014 is the operative development plan and the Cobh Municipal District Local Area Plan 2017 is the operative local plan. The site is located on lands that are subject to zoning objective CH-R-05 Medium A density residential development.
- 3.2.2. Chapter 14 of the Development Plan refers to Zoning and Land Use and includes variation number 1 with reference to implementation of the Vacant Site Levy in residential and regeneration areas as follows:

Vacant Sites Levy

It is the intention of Cork County Council to implement the provisions of the Urban Regeneration and Housing Act 2015, through the establishment of a Vacant Sites Register, identifying sites on which a vacant site levy can be applied. The planning authority will proactively engage through the Municipal District sub-county structures, to identify suitable vacant sites on lands zoned residential and on lands designated as regeneration areas in this plan, which meet the criteria for inclusion in the vacant site register. This will be achieved through a focused application of the levy, facilitating sustainable urban development and bring such vacant sites and buildings in urban areas into beneficial use.

Regeneration Areas

The Urban Regeneration and Housing Act 2015, provides for the inclusion of objectives for the development and renewal of areas identified as being in need of regeneration. As part of the preparation of the Local Area Plans, regeneration sites have been identified in many of our towns. The main objective in identifying Regenerations Areas is to draw attention to the opportunities that exist to redevelop key areas within the towns, where such sites have the potential to contribute to the rejuvenation of the towns, deliver housing, and perhaps act as a catalyst for other developments. In accordance with the provisions of the Urban Regeneration and Housing Act 2015, regeneration areas may, in time, be subject to the Vacant Sites

Levy where the regeneration area is vacant or idle and this has adverse effects on the amenities / character of the area.

County Development Plan Objective

ZU 5-1 Vacant Site Levy-Residential and Regeneration Areas

Encourage the development and renewal of areas, on lands zoned as residential that meet the criteria as set out in the Urban Regeneration and Housing Act, 2015 and on lands designated as regeneration areas, identified in Municipal District Local Area Plans, having regard to the Core Strategy, that are in need of regeneration, in order to prevent –

(i) adverse effects on existing amenities in such areas, in particular as a result of the ruinous or neglected condition of any land,

(ii) urban blight and decay,

(iii) anti-social behaviour or

(iv) a shortage of habitable houses or of land suitable for residential use or a mixture of residential and other uses.

4.0 Planning and VSL History

4.1. Subject site

08/4450 – Variations to a permitted development. Relocation of various houses on the site and substitution of house types.

07/11984 - Variations to a permitted development. Changes to house types and quantum of development.

07/6169 – 33 dwelling houses and 13 duplex apartments.

Planning authority reference **VS0018**.

Location	Folio Number	Owner	Address	Date entered on register
Ballyvoloon, Cobh	149381F	Kevin Damery	Carrig Greine, Ballyleary, Cobh, Co. Cork	29/12/17
Ballyvoloon, Cobh	139182F	Paul Damery	Carrig Greine, Ballyleary, Cobh, Co. Cork	29/12/17
Ballyvoloon,	43503F	Kevin Damery	Carrig Greine, Ballyleary,	29/12/17

Cobh			Cobh, Co. Cork	
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Table 1.

5.0 Planning Authority Decision

5.1. Planning Authority Reports

- 5.1.1. Register of Vacant Sites Report (first report) – Site inspection date 15 November 2016. The site is zoned under objective R-05 Z1 Medium A residential development. The planning history of the site is outlined with a number of permissions amending a parent application for 33 dwellings and 13 duplex apartments. The site is not in use for agriculture and appears overgrown and unused. The site is classified as residential land and has been vacant or idle which will be confirmed in 12 months. The report is supported by colour photographs.
- 5.1.2. Update Report – (second report) Site visit of the 20 November 2017 records no change in the condition of the site, colour photograph attached.
- 5.1.3. The planning authority's submission is supported by a site valuation prepared by GVA Donal O Buachalla, maps, folio reference numbers, the section 7(1) Notice to Paul Damery, the recommendation to place the site on the Register and a table showing those sites in the County currently on the VSR.

5.2. Planning Authority Notice

- 5.2.1. Cork County Council advised the site owner that the subject site (Planning Authority site ref. VS-0018) is now liable for a payment of 3% of its valuation. The site is valued at €12,000 and hence the levy for 2018 is €360. Payment terms are outlined a table outlines those sites liable for the levy.

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 Cork County Council to demand payment of the Vacant Site Levy. The grounds of the appeal can be summarised as follows:
- The appellant states that their family have owned the land for years and that the site was inherited upon the death of the father in 2016. It is the

landowners intent to return from America and build their home on this small site, it is not being hoarded and no financial gain will arise.

6.2. **Planning Authority Response**

None.

7.0 **Assessment**

7.1. 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.

7.2. **The site is no longer vacant**

7.2.1. 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 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.

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

7.3. **Is it a Vacant Site?**

7.3.1. 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 CH-R-05 Medium A density residential development. This assessment takes into account the characteristics of the site in the context of Section 5(1)(a) residential land.

7.4. The need for housing in an area

7.4.1. 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.

7.4.2. 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. I am satisfied that there is therefore a need for housing in the area.

7.5. Suitability of the site for housing

7.5.1. 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.

7.5.2. In this instance the planning authority have provided a planning history for the site that shows that permission has been granted, in the past, for residential development on the site. Likewise, the landowner has indicated a preference to develop the land for a dwelling house for their own use. I also note the infill nature of

the site and the existence of housing in the vicinity. I am satisfied that the site is suitable for housing.

7.6. Vacant or Idle

7.6.1. 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.]

7.6.2. The landowner passes no comment in relation to the use of the site. The planning authority in their reports note that the site was vacant and performed no use, being overgrown and unkept. The planning authority's observations relate to the entire lands that comprise the vacant site and these lands appear to be in three separate ownerships, note table 1 of my report at section 4.1 above. Irrespective of ownership, it is evident from the site photographs and the observations made by the planning authority that 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 were indeed idle by virtue of the overall unkept nature and lack of regular maintenance such as grass cutting. There was also no evidence of agricultural use such as livestock grazing or fodder production. I did note that a minor portion of the overall site, that amounts to 0.039 Hectares, with the Folio reference CK139182F and the subject of this appeal, had recently been partially mown and the grass was short in length. However, I am satisfied that the majority of the site was indeed a vacant site for the purposes of the 2015 Act as amended.

7.6.3. 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 a vacant site.

7.7. Levy Calculation

- 7.7.1. A 'Demand for payment of Vacant Site Levy' was issued to Mr. Paul Damery on the 1 February 2019 stating that the valuation placed on the site is €12,000. The levy rate applicable in this instance is 3% and amounts to €360 and this has not been appealed. It is evident, therefore, that the levy calculation has been correctly calculated.

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 confirm that the site was a vacant site as of the 1st of January 2019 and was a vacant site on 26 day of February 2019, the date on which the appeal was made. 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. The demand for payment of the vacant site levy under Section 15 of the Urban Regeneration and Housing Act 2015 is, therefore, 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 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 is situated in an area where there is a need for housing and, having regard to the planning history, is suitable for the provision of housing,
- (e) the site remains vacant and idle, and,
- (f) the amount of the levy has been correctly calculated at 3% of the site value in 2018,

the Board considered that it is appropriate that a notice be issued to the planning authority to confirm the entry on the Vacant Sites Register and to confirm the demand for payment.

Stephen Rhys Thomas
Planning Inspector

10 September 2019