



An
Bord
Pleanála

Inspector's Report ABP-304502-19

Type of Appeal	Appeal against a Section 18 Demand for Payment.
Location	Belmont, Ferrybank, Co. Kilkenny.
Planning Authority	Kilkenny County Council.
Planning Authority VSL Reg. Ref.	VSR18/21.
Site Owner	Patrick Killoran and Others.
Date of Site Visit	5 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 €10,800 for a site at Belmont, Ferrybank, Co. Kilkenny and identified as VSR18-21.

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. Part of the lands abut an existing housing estate, The Crescent. The site is accessed from Aylesbury Road from a roundabout junction on the R711 and slopes upwards towards well laid out grazing land. A portion of the overall site is not in use for agricultural purposes, being unfenced and not cultivated or managed in any noticeable way, it is waste ground. This portion of the site is mostly overgrown with colonising vegetation and shows signs of previous construction activity. There are earthworks and remains of former roads and the site has been cleared and levelled in places, some time ago. The northern-most portion of the site is laid out in two large agricultural fields, currently in use for livestock grazing.

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 (extended in February 2014) – the lands were zoned residential (medium density).

4.0 Planning History

- 4.1. Subject site
4.1.1. None referenced.

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 (Low - 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. A map with the site outlined accompanies the report.
- 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 (as amended and extended). The site remains a vacant site even though the site is in the ownership of NAMA. 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. VS18-21) is now liable for a payment of 3% of its valuation. The site is valued at €360,000 and hence the levy for 2018 is €10,800. 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.
- 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. A map outlining the site accompanies this notice.

- 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, a land ownership map is attached and differs from the section 12(4) Notice.
- 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, a land ownership map is attached and differs from the section 12(4) Notice.

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:

- The landowners of the property are members of the Congregation of Brothers of Charity and they recently completed registration of the lands on 12 June 2018. Folio 37245F states the registered owners as Patrick Killoran Augustine (otherwise Alfred) T Hassett and Noel Corcoran. The notices that issued were made out to Brothers of Charity Services Ireland, they are not the owners, the notices are invalid.
- The lands have been in continuous use for agriculture since a sale was closed by the owners on the 6 October 2017, registration with the Land Registry completed on the 12 June 2018. The lands were not zoned residential at the time and only came to be zoned residential in the 2017 LAP, operative on the 1 January 2018. Therefore the most recent purchase of the lands occurred before they came to be zoned residential, the lands were in use and should be excluded from the register.
- The owners have no record of receipt of the section 12 Notice informing them of site value and action to take if required.
- The appeal is supported by a copy of the section 15 Notice and other notices issued by the Council, Land Registry folios and maps.

6.2. **Planning Authority Response**

The planning authority set out their approach to the identification of owners. In the first instance and at the time of registration, the owners were Michael Doran, Martin Doran, Cyril Barden and Michael Fortune. After an initial response from one of the owners the planning authority were informed the site was in NAMA, then sold to 'Brothers of Charity'. Correspondence was then forwarded to Brother Alfred (Augustine Hassett) to confirm ownership by Brothers of Charity, confirmed 4 April 2018.

At the time the site was purchased 6 October 2017, the lands were zoned residential in the Ferrybank-Belview LAP 2009 (as amended and extended up until 2020).

The section 12(4) Notice of the 22 May 2018 was issued to the known and registered owners at the time and therefore in accordance with the legislation.

6.3. **Further Responses**

The appellant has responded to the Council's submission by setting out in detail the ownership framework of the 'Brothers of Charity' and its subsidiary companies, of which Brothers of Charity Services Ireland CLG is one of many. Patrick Killoran, Augustin (otherwise Alfred) T Hassett and Noel Corcoran are trustees of the Congregation of the Brothers of Charity. The lands are in fact owned by the congregation of the Brothers of Charity, not Brothers of Charity Services Ireland CLG, they have no beneficial interests in the lands. the Council assumed incorrectly, that the owner of the land was the company (Brothers of Charity Services Ireland CLG).

The residential zoning of the site prior to the recent purchase is not questioned.

The land was purchased by the Congregation of the Brothers of Charity, not the Brothers of Charity Services Ireland CLG.

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. 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. The appellant has not prepared any material to dispute whether the lands are suitable for housing. In this instance I note that the lands are zoned for housing and slope gently upwards from an existing roadway. Though the planning authority have not submitted a detailed planning history for the site, I can see that there is already urban development and roads in the vicinity and in all likelihood services are available in the area. I am satisfied that the lands are suitable for housing.

7.7. Vacant or Idle

7.7.1. Firstly, 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 appellant states that in relation to the new landowners, the lands were and are in use for agriculture. In addition, it is stated that the new owners purchased the lands in 2017, before they were zoned residential. The planning authority state that the lands concerned were zoned residential in the previous 2009 LAP and continue to be zoned residential in the current LAP for the area.
- 7.7.3. My observations of the site conclude that the majority of the lands are in use for agricultural purposes, the lands are neither vacant or idle in that regard. Two large fields are divided by electric stock fencing and water troughs serve each paddock. The southern portion of the site is made up of waste ground with no use. Though a sizable proportion of the overall lands, this waste ground portion of the site is in the minority. Broadly speaking, the majority of the site is in use for a purpose, in this case agriculture. Turning to the change of ownership in 2017 advanced by the appellant in order to remove the site from the register, as the lands were in agricultural use before zoned residential. There is no value in this proposition because the lands in question had been zoned residential since at least the 2009 LAP, well before new ownership in 2017.
- 7.7.4. The question now turns to the use of the lands before the new owners took control in 2017 and for this, I have little information to rely on. 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 assume that the majority of the site was in use for agricultural purposes but I have no information to sustain such an assumption.
- 7.7.5. 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 in use prior to the change of ownership and that the use was for

agricultural purposes. 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.

- 7.7.6. Going back 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 stated that the lands were and are in use for agriculture since they purchased the site in October 2017. I agree, this assertion is borne out by my observations of the site, the majority of which is in use for a purpose and that use is agriculture. However, the underlying fact is that the lands have changed hands whilst zoned residential and the new owners have and are using the lands 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. Thus, the lands are still a vacant site in accordance with section 5(1)(a)(iii)(II) of the 2015 Act.

7.8. Levy Calculation

- 7.8.1. A 'Demand for payment of Vacant Site Levy' was issued to Brother Alfred Hassett (Brothers of Charity Services Ireland CLG) on the 24 April 2019 stating that the valuation placed on the site is €360,000. The levy rate applicable in this instance is 3% and amounts to €10,800 and this calculation has not been appealed. It is evident, therefore, that the levy calculation has been correctly calculated.

7.9. Procedural Issues

- 7.9.1. There are a number of details and points that I would draw the Boards attention to in relation to the various steps that have taken place in registering these lands on the VSR.
- 7.9.2. I note that the maps that accompany the section 7 notices show a larger area of land than that indicated in the map attached to the section 12(4) market value determination and appear to be property ownership maps. The section 12(4) map details the lands with the identifier VSR21 and amount to 4.43 Hectares, the site was valued at €360,000 and I have no information before me from the Valuation Tribunal to indicate that any appeal was made by the owner. For the purposes of my assessment I have taken the section 12(4) map to be the definitive site outline as it

was this extent of land that was valued by the planning authority and this site value corresponds with the Vacant Sites Register published by the planning authority.

- 7.9.3. The appellant has set out a detailed and often confusing narrative in relation to ownership of the lands concerned, that involves individual owners, trustees, congregational ownership and subsidiary companies. This is a complex area of enquiry, but in summary the appellant questions the validity of the notices served by the planning authority and seeks removal of the lands from the register on that basis. The planning authority detail their methodology in the service of notices and their attempts to clarify ownership and ultimately serve notices on the owners as identified by land registry folios. The complex area of legal ownership of the lands concerned is beyond the scope of this assessment other than to state that it appears to me that the planning authority made the best attempt to serve notices on those persons who were the owners at the time. The fact that submissions were made in relation to the initial section 7(1) notice and an appeal is now currently before the Board in relation to a demand for payment, shows to me that the notices were effective in engaging with the owners. For clarity, section 3 of the 2015 Act sets out definitions as follows:

“owner” means—

(a) in relation to land that is registered land within the meaning of the Registration of Title Act 1964, the registered owner,

- 7.9.4. The planning authority have, rightly, served notices on the owners as registered. Should ownership change, section 17 Death or Change of Ownership of the 2015 Act, explains how vacant sites are dealt with. In this instance, as the appellant has stressed, the sale of the site closed in October 2017, the year in which the placement of the site on the register took place. Section 17 of the 2015 states:

(1) Notwithstanding sections 15 and 16 , where in any year there is a change in ownership of a vacant site the amount of vacant site levy to be charged in respect of that site for that year, and for the preceding year, shall be zero.

- 7.9.5. However, the charging of the levy is a matter for the planning authority, not the Board and I suggest that the owner(s) direct enquiries in this regard to the planning authority, subject to the exclusions and exceptions set out in sub paragraphs (2) to (7) inclusive, of section 17 of the 2015 Act.

7.9.6. I am satisfied that there are no significant procedural errors that impact upon this section 18 appeal. There may be issues in relation to the initial placement of the site on the register, but I see no scope for the Board to intervene in a matter that has already been established, vis-à-vis the lands currently stand on the register. As I have outlined above, the majority of the lands were in use for agricultural purposes for the year concerned (2018) and according to my observations continue to be in use for farming. However, the agricultural use on lands zoned residential as demonstrated by the new owners is not a use that is related to the delivery of housing and so the lands must remain a vacant site.

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 still a vacant site on 20th day of May 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, and
- (d) that the site, or the majority of the site is and was 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, and that the most recent purchase of the site occurred after it became residential land,

the Board is satisfied that the site was a vacant site on the 1st of January 2019 and was a vacant site on 20th of May 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.

Stephen Rhys Thomas
Senior Planning Inspector

12 December 2019