



An
Bord
Pleanála

Inspector's Report

ABP-306284-19

Type of Appeal	Appeal against a Section 18 Demand for Payment
Location	Monksland/Bellanamullia, Co. Roscommon
Planning Authority	Roscommon County Council
Planning Authority VSL Reg. Ref.	VS/MB/18/5
Site Owner	Pat Donoghue
Planning Authority Decision	Demand for Payment
Date of Site Visit	15 th March 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 Roscommon County Council, stating their demand for a vacant site levy for the year 2019 amounting to €31,500 for a site located at Monksland/Bellanamullia, Co. Roscommon (VS/MB/18/5).
- 1.2. The appeal site has one stated registered owner Pat Dongohue.

2.0 Background

- 2.1 A Notice of Proposed Entry on the Vacant Sites Register was issued to Pat Donoghue on the 28th March 2018. On the 20th of June 2018 2017, the Notice of Entry on the Vacant Sites Register was issued to Pat Donoghue. This section 7(3) notice was appealed to the Board on the 17th of July 2018. On the 12th of November 2018, the Board confirmed the notice and determined that the site is a vacant site within the meaning of the Act.
- 2.2 A valuation pertaining to the site was issued by Roscommon County Council on the 4th September 2018. The value of the subject site is stated to be €450,000. A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to Pat Donoghue on the 25th of November 2019 for the value of €31,500. The appellant (Mr. Donoghue) has 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 site has a stated area of c. 3 hectares and is located in the townland of Monksland. The site is a rectangular area of ground which is undulating in levels. The site is adjoined to the north, by a residential development known as Sli na Coiste and to the south, by a residential development known as Mount William Court. To the east, is an estate road which provides access to further residential development to the north and terminates at same. To the west, there are open undeveloped lands. The site is undulating rising from the roadside boundary plateauing in the centre of the site.

4.0 Statutory Context

URH ACT

4.1 The Notice issued under Section 7(3) of the Act states that the PA is of the opinion that the site referenced is a vacant site within the meaning of Section 5(1(a)), 5(1(b)) and 5(2) of the Act. The Notice is dated the 20th of June 2018 and is accompanied by a map outlining the extent of the site to which the Notice relates.

4.2 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.

4.4 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.”

4.5 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

5.1 The subject site is zoned 'New Residential' in the Monksland/Bellanamullia (Athlone West) Local Area Plan 2016-2022 (Variation Number 1). The Core Strategy is included at Section 2.3.1 of the Plan, noting a population allocation of 538 persons for Monksland, 215 housing units required and a residential land requirement of 24.2 hectares (including 50% overzoning).

5.2 Section 5.2.1 of the LAP refers to the VSL and notes that the Council will maintain a Vacant Site Register and implement the Vacant Site Levy as required by the Urban Regeneration and Housing Act, 2015, as a mechanism to stimulate site activation in urban areas, which is intended to *"bring underutilised vacant sites and buildings into beneficial use, ensuring more sustainable urban development and an efficient return on state investment in enabling infrastructure."* The site activation measure aims to encourage the release of zoned lands at key locations in order to stimulate development, deliver housing at appropriate locations, and, stimulate the regeneration of vacant urban sites.

5.3 The following specific residential zonings are identified in Development Strategy 3 (see Table 1 of Chapter 6 and Map 13 Land Use Zoning):

- New Residential
- Strategic Residential Reserve

5.4 The Roscommon County Development Plan 2014-2020 was varied in July 2017 (Variation No. 1) which included updates to the core strategy.

6.0 Planning History

6.1 **Ref. 19/348** – Permission granted in December 2019 for a residential development comprising 78 no. units and a crèche facility.

6.2 **Ref. 18/442** – Permission refused in May 2019 for a residential development of 78 units and a crèche.

- 6.3 **Ref. 17/280** – Application withdrawn – Permission was sought for a development of 79 houses and 2 apartments and crèche and all associated services.
- 6.4 **Ref. 07/988** – Permission granted for 52 houses, crèche and 2 apartments (noted application was made for 75 houses, crèche and 2 apartments).
- 6.5 **Ref. 06/1276** – Permission refused for 75 dwellings houses.
- 6.6 **ABP 302102-18** – The Board determined in November 2018 that the subject site is a vacant site within the meaning of the Urban Regeneration and Housing Act 2015. The decision stated:

“Having regard to:

(a) the information submitted to 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 Inspector,

(d) the absence of any evidence to suggest that the site is being used for agricultural purposes, and

(e) that while the site is 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, the most recent purchase of the site occurred after it became residential land, and before, on or after the commencement of section 63 of the Planning and Development (Amendment) Act, 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.”

7.0 **Planning Authority Decision**

Planning Authority Reports

- 7.1 A Vacant Site Assessment Report (10.05.2018) was prepared for the site which outlines the site ownership, dates of the visits to the site, site description, zoning and the planning history as well as providing photographs taken on two site visits over a year apart. It is stated that the site is residential, that there is a need for housing, and that the site is suitable for housing.

7.2 I note that there was a detailed report prepared by Roscommon County Council and submitted with appeal reference ABP302102-18 which set out the need for housing in accordance with section 6(4) of the Act. The Inspector concluded that it had been demonstrated that there is a need for housing in the area.

8.0 The Appeal

Grounds of Appeal

8.1 The grounds of appeal of the appellant can be summarised as follows:

- Site was originally purchased in 2006. Permission was refused in the same year for a development of 75 units. Permission for 52 houses was granted in 2007. Number of units was reduced to accommodate a new relief road.
- Work did not commence on the site due to economic circumstances. The site was farmed in the interim period.
- Permission was extended until 2018. The relief road was not constructed.
- In 2017, it was decided to pursue a new application on the site, including additional units that could now be facilitated due to removal of relief road. Council recommended that a new application be lodged for the entire site.
- Permission was sought in June 2017. It was subsequently withdrawn in August 2017, as Council were not satisfied with layout. Agreement could not be reached on a revised layout. A further application was lodged in August 2018 and was refused permission.
- Following further discussions, permission was granted for 78 units and a crèche facility in December 2019.
- Due to the delays in obtaining planning permission, the appellant acquired other parcels of land in Athlone and has completed a 6 unit estate known as Ard Cuinne. It is proposed to commence works on the subject site in February 2020.
- It does not make financial sense to hold on to the site as doing so will incur additional expense and add to the losses accrued on the site to date.
- Frustrated with the Demand for Payment Levy. Do not consider that Roscommon, Longford and Leitrim are located in a pressure zone. It is unjust to impose a levy on developers in such counties, especially a developer that is eager to proceed.

- It is not the intention of the appellant to hoard the land as a land bank. It is intended to proceed immediately with the development while finance is in place.
- The land has been farmed for the last 10 year and it has not been possible to develop it for the purpose it was zoned due to difficulties with obtaining planning permission.
- The payment of the levy will be a further financial burden.

Planning Authority Response

8.2 Note that the site has been inspected a number of times, most recently on the 8th of November 2019. Photographs attached. The Planning Authority remain satisfied that the site has not been used for agricultural purposes and that it remains vacant.

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) (b) 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 A Section 7(3) Notice of Entry on the Vacant Sites Register was issued to Pat Donoghue the on the 20^h of June 2018. Subsequently a Section 9 appeal was made to the Board under appeal reference 302102-18. A detailed assessment as to whether the site constituted a vacant site was carried out with the Reporting

Inspector. It was detailed that having regard to the core strategy, that it is clear that there is an identified need for housing units within this area which substantially exceeds the number of vacant units outlined, and thus there is a need for housing in the area. Having regard to the planning history of the site, it is considered the site is suitable for housing.

9.5 In terms of the contention that the land was not vacant or idle because it was in agricultural use, it was noted by the Inspector that there was no evidence on site or on file to substantiate this claim. It was detailed that there was no evidence of any livestock on the site nor was it in use for any tillage purposes. It was also noted that from the Folio reference, that the site was acquired by the appellant in 2006. Permission was sought on the lands in 2006 by the appellant for a housing development which was refused because of the layout and residential amenity issues arising. The Planner's report noted that the site was zoned C – primarily residential. Therefore, it would appear that the site was acquired by the appellant after it became residential land, that being that the site was zoned residential when it was acquired by the appellant.

9.6 The Board confirmed the entry on the vacant Sites Register on the 12th of November 2018. Having regard to the previous confirmation and order issued by the Board, I am satisfied that the site constituted a vacant site when the Section 7(3) Notice was issued and that this matter was previously adjudicated on. I do not, therefore, propose to consider this matter further in this assessment.

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

9.13 The appellant has not submitted any evidence to suggest that the subject site is no longer vacant/idle. Photographic evidence from the Council dated the 8th of November 2019 does not indicate any agricultural activity on the site. From my observations on site, there has been no material change to the nature or the use of the lands since the Section 7(3) Notice was confirmed. Whilst I noticed one horse grazing on the site, I am satisfied that the site is not in agricultural use.

9.14 Whilst permission has been granted on the site (application reference 19/348), construction activity has not commenced. From the site visit, it is evident that the site remains vacant and idle and no development has commenced on the site. In the matter of a current planning application or indeed an extant planning permission for

the site, the Act is clear; the test for inclusion is the past condition of the site from the date of entry on the Register. I refer to Circular Letter PL7/2016, Appendix 3, that states: “*where a vacant site has an extant planning permission associated with it, this should not be a consideration in determining whether to apply the levy.*”

Levy Calculation

- 9.15 A Notice of Valuation Entered on the Vacant Site Register was issued to Pat Donoghue on the 4th of September 2018 stating that the valuation placed on the site is €450,000.
- 9.16 A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to on the 25th of November 2019 for the value of €31,500.
- 9.17 The levy rate applicable in this instance is 7%. It is evident, therefore, that the levy calculation has been correctly calculated.

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 confirm that the site was a vacant site as of the 1st of January 2019 and was a vacant site on 23rd December 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.

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 Senior Planning Inspector;

- (d) The fact that 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 absence of any evidence to suggest the site is being used for agricultural purposes;
- (f) That while the site is 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, the most recent purchase of the site occurred after it became residential land, and before, on or after the commencement of section 63 of the Planning and Development (Amendment) Act, 2018;
- (g) The site remains in a vacant condition and no development has commenced;
- (h) The amount of the levy has been correctly calculated at 7% of the site value in 2018;
- (i) There has been no change in the ownership of the site;

the Board is satisfied that the site was a vacant site on the 1st of January 2019 and was a vacant site on 23rd December 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.

Erika Casey

Senior Planning Inspector

16th March 2020