



An
Bord
Pleanála

Inspector's Report ABP-306678-20

Type of Appeal	Appeal against a Section 18 Demand for Payment.
Location	Poundbrook Lane, Rathdrum, Co Wicklow.
Planning Authority	Wicklow County Council.
Planning Authority VSL Reg. Ref.	VS/RATHDRUM/06
Site Owner	Leslie Armstrong.
Date of Site Visit	5 June 2020.
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 Wicklow County Council, stating their demand for a vacant site levy for the year 2019 amounting to €4,200 for a site at Poundbrook Lane, Rathdrum, Co Wicklow, and identified as VS/RATHDRUM/06.
- 1.2. The appeal site has one stated owner Leslie Armstrong.
- 1.3. A Notice of Proposed Entry on the Vacant Sites Register was issued to Leslie Armstrong the 26 January 2018. On the 26 June 2018, the Notice of Entry on the Vacant Sites Register was issued to Leslie Armstrong.
- 1.4. A valuation pertaining to the site was issued by Wicklow County Council on the 4 September 2019. The value of the subject site is stated to be €60,000. A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to Leslie Armstrong on the 20 of January 2020 for the value of €4,200. The owner (Leslie Armstrong) has appealed the Demand for Payment Notice issued pursuant to Section 15 of the Urban Regeneration and Housing Act.

2.0 Site Location and Description

- 2.1. The appeal site is located in the centre of Rathdrum, a relatively small town in south west Wicklow. The Wexford to Dublin railway line passes the east of the town. The site is located along Poundbrook Lane, a narrow laneway that serves a small number of houses. Poundbrook Lane is accessed from a wide portion of the main street of Rathdrum (R755) opposite St Saviour's Church of Ireland and the streetscape is characterised by fine houses and a neat public realm. The character of Poundbrook Lane is defined by the subject site boundary along its southern edge that comprises stone buildings in disrepair and in ruins. The interior of the site falls gently down to a stream, is bound to the east by a stone wall and composed of rough or waste ground.

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)(b) and 6(6) of the Act. The 7(1) Notice was issued 24 January 2018. The site was subsequently entered onto the register 25 June 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.

4.0 Development Plan Policy

4.1. Rathdrum Local Area Plan 2017 – 2023

4.1.1. The site is subject to two different zonings. The northern section of the site is zoned TC – Town Centre with the Objective – To provide for the development and improvement of appropriate town centre uses including retail, commercial and civic use. The section of the site adjacent to the stream is zoned OS2 – Open space with the objective to protect and enhance existing open, undeveloped lands. To protect, enhance and manage existing open, undeveloped lands that comprise flood plains, buffer zones along watercourses and rivers, steep banks, green breaks between built up areas, green corridors and areas of natural biodiversity.

4.1.2. The current **Wicklow County Development Plan 2016-2022** refers to Urban Regeneration and Housing in Chapter 4 of the Plan and specifically at Policy HD19 where it states:

In many settlements in the County, there are sites and areas in need of development and renewal, in order to prevent:

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

- b. urban blight and decay,
- c. anti-social behaviour, or
- d. a shortage of habitable houses or of land suitable for residential use or a mixture of residential and other uses.

It is an objective of this plan to encourage and facilitate the appropriate development of such sites /lands and all available tools and mechanisms, including the Vacant Site levy, may be utilised to stimulate such development.

In this regard, it is considered that all lands zoned 'Town Centre' in this plan (this refers to Level 5 settlements) as well as the following zones in larger towns (with stand alone plans) may include sites that are in need of renewal and regeneration, and these areas will be examined in detail to determine if there are sites where the Vacant Site Levy should be applied. Rathdrum is a 'Level 5' settlement in the County Settlement Hierarchy.

5.0 Planning History

5.1. Subject site

PA ref **18/1414** and **ABP-305202-19** – Permission refused for 25 houses. 20 December 2019.

1. The site of the proposed development is located on Poundbrook Lane which is seriously substandard in terms of width, alignment, surfacing and carrying capacity to facilitate vehicular movements to and from the site. There is insufficient evidence to show that the applicant has sufficient legal interest over the lane to upgrade or restrict traffic movements on the lane. Furthermore, sightlines are restricted in a southwards direction at the junction of Poundbrook Lane and the R755, Main Street. It is considered that the additional traffic associated with the proposed development would endanger public safety by reason of traffic hazard and obstruction of road users and would, therefore, be contrary to the proper planning and sustainable development of the area.
2. Having regard to the greenfield nature of the site, to the location of the Poundbrook stream on site which is within the catchment of the Avonmore

River and to the proximity of the site to Flood Zone B, and on the basis of the submissions made in connection with the planning application and the appeal and in the absence of a fully detailed Flood Impact Assessment, the Board is not satisfied that the proposed development would not give rise to an increased risk of flooding of the site or of property in the vicinity. The proposed development would, therefore, be prejudicial to public health and be contrary to the proper planning and sustainable development of the area.

3. The proposed development, by reason of its design and layout and qualitative provision of private open space and communal open space would fail to establish a satisfactory standard of amenity for future occupants. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area would conflict with the provisions of the current Development Plan for the area and with the minimum standards recommended in the "Sustainable Residential Development in Urban Areas: Guidelines for Planning Authorities" issued by the Department of the Environment, Heritage and Local Government in December 2009.
4. Having regard to the proposed alterations of the existing topography and specifically the extensive use of retaining walls within the scheme, to the removal of existing boundary hedge and to the proposed boundary wall along Brewery Bends, it is considered that the proposed development would constitute an unattractive and inappropriate housing scheme, which would impact negatively on the character of the area and would not contribute positively to the public realm, contrary to the "Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (Cities, Towns and Villages)" issued by the Department of the Environment, Heritage and Local Government in May 2009, the Design Manual for Urban Roads and Streets (DMURS), and which would also conflict with the policies of the Wicklow County Development Plan 2016-2022, particularly Objective HD2 and the provisions of Appendix 1 of the Development Plan. The proposed development would, therefore, seriously injure the amenities of the area and of property in the vicinity, and would be contrary to the proper planning and sustainable development of the area.

5. It is considered that the design of the proposed development would impact negatively on the character and setting of the adjacent Architectural Conservation Area and to protected structures, National Inventory of Architectural Heritage (NIAH) register number 16318006 and NIAH register number 16318007, which together with their neighbours and the church to the east form part of an informal late Georgian Square. The proposed development would be contrary to the “Architectural Heritage Protection - Guidelines for Planning Authorities” issued by the Department of the Environment, Heritage and Local Government in May 2004, would seriously injure the visual amenities of the area and of property in the vicinity, and would be contrary to the proper planning and sustainable development of the area.

6.0 Planning Authority Decision

6.1. Planning Authority Reports

- 6.1.1. Register of Vacant Sites Report (first report – 11 January 2018) - The ruinous condition of the site is having an impact upon the overall appearance of the area, passive supervision of the laneway is limited and this affects personal safety.
- 6.1.2. Section 15 Report – (15 January 2020) the site remains vacant, the buildings are still in a ruinous condition and the dumping of waste/litter is taking place.

6.2. Planning Authority Notices

- 6.2.1. Wicklow County Council advised the site owner that the subject site (Planning Authority site ref. VS/RATHDRUM/06) is now liable for a payment of 7% of its valuation. The site is valued at €60,000 and hence the levy for 2019 is €4,200. Payment terms and methods are outlined.
- 6.2.2. A Section 12(4) Notice issued on the 4 September 2019, advising the owner of the site valuation and instructions to make an appeal to the Valuations Tribunal, accompanied by a map with the site outlined.
- 6.2.3. A section 7(3) Notice issued on the 26 June 2018, advising the owner that their site had been placed on the register.

- 6.2.4. A section 7(1) Notice issued on the 26 January 2018, advising the owner that their site had been identified as a vacant site and invited submissions, accompanied by a site map.

7.0 The Appeal

7.1. Grounds of Appeal

- 7.1.1. The landowner has submitted an appeal to the Board, against the decision of Wicklow County Council to retain the subject site on the Register. The grounds of the appeal can be summarised as follows:
- Site no longer vacant on the 1 January 2019, as it has been leased to a Mr Thomas McDonnell for three years, date of lease 1 April 2018.
 - Permission for a housing development was refused 20 December 2019, reference 18/1414 refers.

The appeal is supported by a copy of the section 15 Notice and map, notice of entry onto the register, lease agreement and a PA/ABP refusal of planning documentation.

7.2. Planning Authority Response

- 7.2.1. A site inspection was conducted on the 8 January 2020 and the site was found to be vacant and idle, the buildings still in a state of decay and no activity on site, photographs supplied. Another site visit was conducted on the 13 March 2020, no change. It was noted that lands further south of the appeal site may be in use for agricultural purposes, but not the site in question.
- 7.2.2. It is noted that the owner intends to develop the wider lands and that permission was refused. The value of lands has been determined on the current state, not future development potential of the site, valuation has not been appealed.

7.3. Further Responses

None.

8.0 Assessment

8.1. Introduction

- 8.2. 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.

8.3. The site is no longer vacant

- 8.3.1. 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)(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 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 2019.
- 8.3.2. For the purposes of this assessment, I will consider both scenarios.

8.4. Is it a Vacant Site?

- 8.4.1. Section 5(1)(b) of the Act sets out the criteria for a vacant site consisting of 'Regeneration' land. By reference to the Planning Authority notice, it is stated that the subject site comprises 'Regeneration' land for the purposes of the Vacant Site Levy. A Section 7(3) Notice of Entry on the Vacant Sites Register was issued to Leslie Armstrong the on the 26 June 2018. A Section 9 appeal was not made to the Board, the site stands on the register. The planning authority made site inspections on the 11 January 2018 and 13 June 2018, a detailed description and photographs of the site accompany the report. The owner responded to the section 7(1) notice, but the planning authority saw no merit in the submission not to place the site on the register. The site has been on the register since June 2018. Given the reports of the planning authority and the submission made by the owner to the section 7(1) notice, I am satisfied that the site constituted a vacant site when the Section 7(3) Notice was issued. I do not, therefore, propose to consider this matter further in this assessment.

8.5. Is the site no longer vacant as of the 1st of January 2019?

- 8.5.1. The appellant has submitted evidence to suggest that the subject site is no longer vacant/idle. The evidence forms two parts, firstly that a three year lease signed on

the 1 April 2018 shows the site in use by another and that permission refused for a housing development across the wider lands indicates an intention of use.

- 8.5.2. In assessing this matter, I will consider the characteristics of the site in the context of Section 5(1)(b) 'regeneration' land. There are two specific criteria to be considered in this regard.

The site, or the majority of the site, is vacant or idle:

- 8.5.3. Photographs taken by the Council for January 2018 and January and March of 2020 do not indicate any activity on the site. From my observations of the 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 the wider lands might be in some form of agricultural use, for instance I note that grass may have been grazed. On the whole, I am satisfied that the site is not in use, agricultural or otherwise.
- 8.5.4. Whilst permission has been sought on the site, the proposal was refused by both the planning authority and the Board on appeal. Of note, the reasons for refusal do not highlight infrastructural obstacles to development, rather that the proposed development was incompatible with its location in terms of the architectural character of the area, topography, flood risk, scheme design and legal interest to make necessary improvements to Poundbrook Lane. It is evident that the lands remain vacant and idle and no development has commenced on the site and nor could it. In the matter of making a planning application for the site, the Act is clear; the test for inclusion on the register is the past condition of the site from the date of entry on the register. In this instance, there is no extant permission and the mere act of seeking permission is not and cannot be considered a use for the site. I do not consider that there has been any material change in circumstances that would not warrant the determination that the site is no longer vacant.

The site being vacant or idle has adverse effects on existing amenities or reduced the amenity provide by existing infrastructure and facilities (within the meaning of section 48 of the Act of 2000) in the area in which the site is situated or has adverse effects on the character of the area.

- 8.5.5. It is stated under section 6(6) of the Act that the matters relating to adverse effects are to be determined by reference to the following criteria:

(a) Land and structures in the area were, or are, in a ruinous or neglected condition

(b) Anti-social behaviour was or is taking place in the area, or

(c) There has been a reduction in the number of habitable houses, or the number of people living, in the area

and whether or not these matters were affected by the existence of such vacant or idle land

8.5.6. I will consider each of these in turn.

8.5.7. From my site visit, I can confirm that the buildings are in very poor repair, to the point of being ruinous. The buildings that can be seen from the public realm have the potential to positively add to the character of the area because of their form and massing, however, they are not well maintained and their condition detracts from the appearance of the area. I note that scaffolding and hoarding have been erected on part of the site along Poundbrook Lane, at least since placement on the register. Judging from the planning authority's photographs, this has been erected since June 2018. It shows some level of maintenance, to a single building but not enough to alter the degree of ruin that can be viewed from the public realm.

8.5.8. There is a very small amount of litter that has collected in a recess between building and wire fencing, this may have been a once off occurrence. I also note that the planning authority observed litter on the site at times. It is likely that antisocial behaviour is or was taking place on the site from time to time.

8.5.9. There is no evidence to suggest that as a result of the vacant site that there has been a reduction in the number of habitable houses, or the number of people living in the area.

8.5.10. In conclusion, I consider that 2 of the tests in Section 6(6) are met and that the site has an adverse effect on existing amenities and has been subject to anti-social behaviour and thus can be categorised as a vacant site as defined by Section 5(1)(b).

8.5.11. Taking all these matters into consideration, I do not consider that the paper exercise of leasing the lands to be an actual use for the site. No evidence of a use has been presented by the owner or lessee and my observations do not confirm any

observable use for the site. The task of making a planning application cannot be considered a use for the site either. The buildings are poorly maintained, some are ruinous and the site interior is not well kept. Whilst some form of maintenance may be ongoing it is sporadic and token at best. I am satisfied that given the planning authority's submissions, my own observations and the owner's lack of evidence to show the site was no longer a vacant site on 1 January in the year concerned or was no longer a vacant site on the date on which the appeal under this section was made, that the site remains a vacant site and the charge should be levied.

8.6. Levy Calculation

- 8.6.1. A Notice of Valuation Entered on the Vacant Site Register was issued to Leslie Armstrong on the 4th of September 2019 stating that the valuation placed on the site is €60,000.
- 8.6.2. 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 20 day of January 2020 to the value of €4,200.
- 8.6.3. The levy rate applicable in this instance is 7%. The rate of levy has been increased from 3% to 7% of the market valuation of relevant sites with effect from January 2020, to be applied in respect of sites that were included on vacant site registers in 2019. It is evident, therefore, that the levy calculation has been correctly calculated.

9.0 Recommendation

- 9.1. 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 17th February 2020, 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.

10.0 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 neglected and ruinous condition of the buildings on site which detracts from the residential amenities of the area,
- (e) The evidence of antisocial behaviour having taken place on the site,
- (f) That the majority of the site is and was vacant,
- (g) The amount of the levy has been correctly calculated at 7% of the site value in 2019,
- (h) 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 17th February 2020, 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

16 June 2020