



An  
Bord  
Pleanála

## Inspector's Report ABP-306679-20

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| <b>Type of Appeal</b>                   | Appeal against a Section 18 Demand for Payment. |
| <b>Location</b>                         | The Murrough, Wicklow Town, Co Wicklow.         |
| <b>Planning Authority</b>               | Wicklow County Council.                         |
| <b>Planning Authority VSL Reg. Ref.</b> | VS/W/05.  |
| <b>Site Owner</b>                       | Cable Rock Development Limited.                 |
| <b>Date of Site Visit</b>               | 5 June 2020 and 16 September 2020.              |
| <b>Inspector</b>                        | 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 €70,000 for a site at The Murrough, Wicklow Town, Co. Wicklow and identified as VS/W/05.
- 1.2. The appeal site has one stated registered owner Cable Rock Developments Limited.
- 1.3. A Notice of Proposed Entry on the Vacant Sites Register was issued to 4 parties comprising the Secretary and 3 directors of Cable Rock Developments Limited on the 26 July 2017. On the 20 June 2018, the Notice of Entry on the Vacant Sites Register was issued to Cable Rock Developments Limited. This section 7(3) notice was appealed to the Board on the 17 July 2018. On the 3 December 2018, the Board confirmed the notice and determined that the site is a vacant site within the meaning of the Act.
- 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 €1,000,000. A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to Cable Rock Developments Limited on the 20 January 2020 for the value of €70,000. The appellant (Cable Rock Developments Limited) 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 site in question comprises part of a larger complex of gabled warehouses located within a large site in the Murrough area of Wicklow Town. The site extends up to the roadway over the railway line and access road to the Port. The warehouses are large structures in varying states of repair, some construction work was taking place on the northern section of the site. One bay of the warehouse building was open and large cable drums were stored inside.

## **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 26 July 2017. The site was subsequently entered onto the register 20 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

4.1.1. 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. In terms of Wicklow Town and Rathnew the following zones are included – TC, VC, PT, MU.

- 4.1.2. The site is zoned mixed use (MU) in the **Wicklow Town – Rathnew Development Plan 2013-2019**, that seeks To provide for mixed use development including residential, community, employment and retail uses subject to the objectives specified for each mixed use zone in the development plan. The is also located within an identified Opportunity Area. The description of which is as follows:

To allow for new mixed use developments at the Murrough and the Whitegates MU zones as extension areas for the core town centre area of Wicklow.

Development in The Murrough shall be in accordance with the objectives and standards set out in the Murrough Opportunity Area Brief, while the Whitegates area may be developed as a mixed use residential, employment, community and commercial zone subject to the development of a masterplan for the entire zone.

In both areas, only retail development that would be consistent with the provisions of this plan and the County Retail Strategy shall be considered.

## 5.0 Planning History

### 5.1. Vacant site history

PA ref: VS/W/05 and ABP ref PL27 .302108 – Section 7(3) Notice Confirmed.

### 5.2. Planning Application History

No relevant site history found.

## 6.0 Planning Authority Decision

### 6.1. Planning Authority Reports

- 6.1.1. The site the subject of this appeal required a number of reports before eventual placement on the register, the information presented by the Planning Inspector for

ABP-302108-18, is relevant. However, with reference to the current appeal before the Board, the following reports of the Council are relevant:

6.1.2. **Section 15 Report** dated 13 January 2020, that states: the valuation of the site €1,000,000, site inspection date of 10 January 2020, an assessment that 9% of the site area has come into use, but the majority of the site remains vacant. The majority of buildings are showing neglect and lack of maintenance, dumping has taken place indicating anti-social behaviour, issue section 15 Notice.

## 6.2. **Planning Authority Notices**

6.2.1. Wicklow County Council advised the site owner that the subject site (Planning Authority site ref. VS/W/05) is now liable for a payment of 7% of its valuation. The site is valued at €1,000,000 and hence the levy for 2019 is €70,000. 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 20 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 July 2017, 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:

- The site is not vacant, it comprises buildings that have been available for rent since 2014. The majority of the overall lands are currently in use, it is not understood why the overall site has been subdivided to only comprise 1.8 Hectares. Appendix F details the current list of tenants.

- The amount of levy has been incorrectly calculated; it should amount to 3% of €1,000,000 – that would be €30,000.

The appeal is supported by location maps, a site plan showing tenants/occupiers, photographs of the site in use in 2019, Final Valuation Certificates (Commercial Rates) and a copy of the section 15 Notice issued by the Council.

## **7.2. Planning Authority Response**

- 7.2.1. The Board are requested to note the planning authority's own decision in relation to the vacant nature of the site and the composition of the site, as it is formed from a larger land holding.
- 7.2.2. Based upon a site visit of the 20 January 2020, the site remains as it was, with only one unit in occupation, or 9% of the site. The condition of the site remains the same in compliance with 6(6) of the 2015 Act. The use of the northern portion of the site for stockpiling building materials is noted (13 March 2020). The parking of cars/plant/machinery stated by the appellant as having taken place during November and December 2019, is considered a temporary use, that has now ceased.
- 7.2.3. The calculation of the levy is in accordance with the amended 2015 Act, that is the levy was increased to 7% for 2019. A error in the covering letter is noted but the Notice itself details the correct levy calculation and rate.

## **7.3. 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 the rateable value of the site, that confirms its valuable use as industrial lands. The site has no adverse impacts upon the area, as the area as a whole is in industrial use. There is no demand for residential development in Wicklow Town. The site is in use, as noted by Wicklow County Council's observations. The site continues to be in use for industrial proposes, stockpiling and vehicle movements.

## **8.0 Oral Hearing Request**

- 8.1. There is provision within the Planning and Development Act 2000 (as amended) to hold an Oral Hearing in respect of appeals, referrals and applications, section 134 of the Act refers. I note the thoroughness and detailed consideration provided by the

planning authority and the detailed information provided by the appellant that allows me to be satisfied with the amount of relevant material before me to allow for a reasoned decision to be made by the Board. I do not consider that there is a compelling case to hold a hearing and that the necessary information is held on the file.

## **9.0 Assessment**

### **9.1. Introduction**

9.2. 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.

### **9.3. The site is no longer vacant**

9.3.1. 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.

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

### **9.4. Is it a Vacant Site?**

9.4.1. A Section 7(3) Notice of Entry on the Vacant Sites Register was issued to Cable Rock Developments Limited the on the 20 June 2018. Subsequently a Section 9 appeal was made to the Board under appeal reference ABP-302108-18. A detailed assessment as to whether the site constituted a vacant site was carried out by the Reporting Inspector. The conclusions reached were that the site was vacant and in a neglected condition and that antisocial behaviour had taken place, Sections 6(6)(a) and (b) of the 2015 Act therefore satisfied. The Board confirmed the entry on the

vacant Sites Register on the 3 December 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.

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

9.4.3. The appellant has submitted material that indicates that some of the units had been in use and that the forecourt of the site was in use for parking vehicles, storing plant and machinery. In addition, the appellant states that the road and yard area are constantly in use by vehicles in order to manoeuvre and turn around. Stockpiling of building materials also takes place on the site. The Council do not dispute these facts, but state that in their opinion the majority of uses on the site as described by the appellant are of a temporary nature and that use of one unit only equates to 9% of the site area. Therefore, the majority of the site is still a vacant site.

9.4.4. From my observations on site, taken on two separate occasions I can confirm that a single unit was in use for the storage of cable drums, the doors were open, but no one present. The yard area at the northern tip of the site was in use for storing building materials and a construction vehicle was shifting this material about the site. On a separate occasion, I observed that all units were closed up and no activity taking place on the site in question. For all intents and purposes the site had a vacant or idle appearance at the time of my site visit and this situation more or less matches the planning authority's opinion of the site. The appellant disputes this and lists a number of activities having occurred on the site during 2019 and that the site has a rateable value. Specifically, the appellant outlines the use of the site for car parking and as a temporary base for a television production. The planning authority consider these uses to be temporary in nature and not sufficient to lift the site free of the levy.

9.4.5. Regarding the use of the site for the period concerned, 2019, there are a number of factors to consider before looking at the condition of the site and buildings. The appellant has listed a variety of uses for the site and they include, parking and manoeuvring vehicles, site compound for building materials and seasonal television production. The charging of commercial rates is a separate matter and I do not



concern myself with this administrative charge on the site. The appellant has submitted a site plan that shows tenants and vacancies, from this plan most of the site appears without a tenant and thus a use. From the information submitted by the appellant and the planning authority, it is very difficult to conclude that the majority of the site is in use for the period concerned. A state of affairs that has changed little during 2020, up to the dates of my site visits. I am satisfied that the majority of the site was vacant or idle for the chargeable period, 2019. If matters change the owner can notify the planning authority under section 10 of the 2015 Act.

**9.5. The site being vacant or idle has adverse effects on existing amenities or reduced the amenity provide by existing infrastructure and facilities in the area in which the site is situated or has adverse effects on the character of the area.**

9.5.1. 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*

9.5.2. I will consider each of these in turn in the context of the area. In this regard, I note that a new road (the Port Access Road), a playground, car park and sea front amenities have been constructed in the area. These pieces of infrastructure would represent infrastructure and facilities in the vicinity of the site and collectively contribute to the character of the area.

9.5.3. Ruinous or neglected condition - The condition of the buildings on site are not ruinous but they do show signs of significant neglect and lack of cosmetic and functional maintenance. It appears to me that the condition of the buildings and the site surrounds remains unchanged from the time the placement of the site on the register. I am satisfied that the dilapidated nature of the buildings on the site, are and have been in the past adversely affecting the character of the area.

- 9.5.4. Antisocial behaviour - The planning authority have highlighted significant levels of dumping on the site and conclude that this equates to antisocial behaviour having taken place on the site. This may be the case, however, I did not detect any such high levels of litter or dumping to match the photographs submitted by the planning authority. However, on the balance of probability and the expansive size of the site it likely that some level of antisocial behaviour is taking place on the site. For this I rely on the evidence provided by the planning authority.
- 9.5.5. Habitable houses and reduction in population - 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.
- 9.5.6. 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)(ii).
- 9.6. Taking all these matters into consideration, I do not consider that the uses listed by the owner equate to the majority of the site, the lands are underused. The buildings are poorly maintained, some excessively so 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.
- 9.7. There has been no material change to the nature or the use of the lands since the Section 7(3) Notice was confirmed or since the date that the appeal was lodged. I am satisfied that the site remains a vacant site in accordance with section 5(1)(b) and tested by section 18(3) of the 2015 Act.
- 9.8. **Procedural Matter**
- 9.8.1. The Board should note that the calculation of time limits was adjusted during a period of emergency in the first half of 2020, the Emergency Measures in the Public Interest (Covid-19) Act 2020 refers. This may impact upon any Order that the Board decide to make and the adjustment to any time periods should be duly considered in

the context of Section 251A(1) and (2) of the Planning and Development Act 2000 (as amended).

### 9.9. Levy Calculation

- 9.9.1. A Notice of Valuation Entered on the Vacant Site Register was issued to Cable Rock Development on the 4 of September 2019 stating that the valuation placed on the site is €1,000,000.
- 9.9.2. A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to Cable Rock Development on the 20 of January 2020 for the value of €70,000.
- 9.9.3. 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.
- 9.9.4. On a point of detail, alerted by the appellant and accepted by the planning authority, I note that the cover letter that accompanied the section 15 Notice stated that the site is subject to a levy of 3%. The Demand Notice has been calculated by applying the 7% applicable rate and the levy due stated as €70,000. The Director of Services Order Number 53/2020 that requires the service of the Notice refers to 7%, of the value of €1,000,000 and levy due €70,000. Asides from the error made by the cover letter, the applicable rate is 7% and it is evident, therefore, that the levy calculation has been correctly calculated. The Demand Notice issued under section 15 of the 2015 Act correctly states the site value and the levy due, I am satisfied that no further action is warranted to correct the error made by the planning authority's cover letter.
- 9.9.5. 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 1 January 2019 and was a vacant site on 17 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.

## 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 Planning Inspector;
- (d) The neglected condition of the buildings on site which detracts from the amenities of the area and that has adverse affects on the character of the area,
- (e) That the majority of the site is and was vacant,
- (f) The amount of the levy has been correctly calculated at 7% of the site value in 2019,
- (g) There has been no change in the ownership of the site,

the Board is satisfied that the site was a vacant site on the 1 of January 2019 and was a vacant site on 17 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.

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Stephen Rhys Thomas  
Senior Planning Inspector

23 September 2020