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Bord  
Pleanála

## Inspector's Report ABP-306730-20

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<b>Type of Appeal</b>	Appeal against a Section 18 Demand for Payment.
<b>Location</b>	Market Place, Rathdrum, Co Wicklow.
<b>Planning Authority</b>	Wicklow County Council.
<b>Planning Authority VSL Reg. Ref.</b>	VS/RATHDRUM/08
<b>Site Owner</b>	Pinturas Limited.
<b>Date of Site Visit</b>	5 June 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 Market Place, Rathdrum, Co Wicklow and identified as VS/RATHDRUM/08.
- 1.2. The appeal site has one stated registered owner Pinturas Limited.
- 1.3. A Notice of Proposed Entry on the Vacant Sites Register was issued to Pinturas Limited on the 29 January 2020. On the 19 September 2018, the Notice of Entry on the Vacant Sites Register was issued to Pinturas Limited. This section 7(3) notice was appealed to the Board on the 24 September 2018. On the 10 April 2019, 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 18 December 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 Pinturas Limited on the 28 January 2020 for the value of €70,000. The appellant (Pinturas 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 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 at Market Place at the centre of the town. The lands are positioned behind the retail units that front onto Market Place and the site stretches north westwards with Gilberts Row to the north and Brewery Lane to the south. It is a large extensive site that comprises unfinished development at its eastern end with cleared ground now overgrown at its western end. The ground level rises to the west from Market Place.

### 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. A 7(3) Notice was issued 19 September 2018. The site was subsequently entered onto the register 19 September 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

The site is located on lands zoned TC – Town Centre ‘To provide for the development and improvement of appropriate town centre uses including retail, commercial, office and civic use, and to provide for ‘Living Over the Shop’ residential accommodation, or other ancillary residential accommodation’, and within an Action Area/Opportunity Site, OP1 Market Square, objectives on this site include:

- To provide for a mix of uses capable of accommodating retail / commercial / residential / community development;
- A ‘town centre’ type density will be required to be achieved across the site; a site coverage of at least 50% and a plot ratio of at least 1:1 will be expected;
- Those parts of any proposed development that adjoin existing streets shall provide for an active street frontage, that is in keeping with the existing

character of the town; existing buildings of substance or of streetscape / historical character shall be retained and sympathetically redeveloped.

#### 4.2. **Wicklow County Development Plan 2016-2022**

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 Settlement Zone 3 where TC and VC are included for the purposes of the Act. The site is zoned TC in the current Plan.

## 5.0 **Planning History**

### 5.1. Subject site VSL History

**ABP-302623-18** - Vacant Site Levy - Appeal S.9. Notice Confirmed

(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, and

(d) the neglected condition of the site and the neglected and ruinous structures thereon, which it is considered has adverse effects on existing amenities and on the character of the area,

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.

## 5.2. Subject site Planning History

**Ref. 19/1055** – demolition of existing derelict structures, the construction of a part 2 storey and part 3 storey care home building consisting of 126 beds, external landscaped areas, a roof top landscape garden, 54 car parking spaces, 6 bicycle parking spaces, pedestrian entrance link to adjacent development, entrance roadway, boundary treatment and all other associated site works on 0.5944 ha and a modification of the common boundary between the previously approved permission, Reg Ref 18/87 and this current application. No decision issued.

**Ref. 18/87** – Permission granted in July 2018 for demolition of existing blocks 3, 4, 5, 6, 7 and 8; change of use of Block 1 from credit union to commercial and Block 2 from library to commercial; construction of a new 2-storey primary care centre; construction of a new single storey building to accommodate a library, café and pharmacy and 70 car parking spaces on a site of 0.5584 hectares.

Part of site:

**Ref. 17/1355** – change of use from pharmacy to use as a credit union.

**Ref. 17/48** – change of use of block 6 from public library and tourist office to use as a credit union (previous applications 05/3375 and 15/1 refer).

**Ref. 16/794** – minor alterations to Ref. 15/1.

**Ref. 15/1** – change of use from commercial and office use of existing buildings (constructed pursuant to Ref. 05/3375) to Block 1 – pharmacy, Block 4 – dental and GP, Block 5 – HSE primary care centre, Block 6 – public library and tourist office.

**Ref. 05/3375** – Mixed use development of 55 residential units and 2,900 sq.m of commercial/office residential development including new buildings and refurbishment of existing buildings.

**Ref. 02/7274** – mixed use development of 61 residential units and 3,723 sq.m of commercial and civic development.

## **6.0 Planning Authority Decision**

### **6.1. Planning Authority Reports**

- 6.1.1. Register of Vacant Sites Report (first report – 21 January 2018) - The ruinous condition of the site is having an impact upon the overall appearance of the area, the site is unsafe and may lead to antisocial behaviour.
- 6.1.2. Register of Vacant Sites Report (second report 2 – 19 June 2018) - The ruinous and neglected condition of the site is having an impact upon the overall appearance of the area, the site is unsafe and may lead to antisocial behaviour. A mapping error should be corrected and new notice issued.
- 6.1.3. Register of Vacant Sites Report (second report 2B– 11 September 2018) - The ruinous and neglected condition of the site is having an impact upon the overall appearance of the area, the site is unsafe and may lead to antisocial behaviour.
- 6.1.4. Section 15 Report – (15 January 2020) the site remains vacant, the buildings are still not in use and the dumping of waste/litter is taking place. Report accompanied by photographs.

### **6.2. Planning Authority Notices**

- 6.2.1. Wicklow County Council advised the site owner that the subject site (Planning Authority site ref. VS/RATHDRUM08) is now liable for a payment of 3% of its valuation. The site is valued at €1,00,000 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 18 December 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 19 September 2018, advising the owner that their site had been placed on the register.

- 6.2.4. A section 7(1) Notice issued on the 21 June 2018, advising the owner that their site had been identified as a vacant site and invited submissions, accompanied by a site map that corrected an earlier error.
- 6.2.5. 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:

- Background - The appellant points out that the site would be better dealt with by the Derelict Sites Act. Vacant sites should be clearly identified in the development plan for housing by objectives related to regeneration. The site does not display the characteristics for future housing development, it is an opportunity site for mixed use. Current plans for the site have no residential component. This is because it is not financially viable to build and sell apartment type units in this location in Rathdrum.
- Purpose of VSR – the appellant states that even though they cannot provide evidence that there is not a housing need in the area (section 6(4) of the Act), procedures have not been taken to demonstrate that there is.
- Lands not associated with VSR – the market has failed to support the previously intended residential uses for the site. Since new ownership in 2014, a significant element of the ‘opportunity site’ has been the subject of planning applications for commercial development, 19/1055 and 18/87 refers. The appellant has invested more than €200,000 in fees and costs in making planning applications, none of which will yield residential development.
- Market Value – an incorrect assessment of market value has been made, the amount of the levy has been incorrectly calculated:

- a) The lands are subject to significant constraints, requiring complex financial considerations, none of which envisage residential development,
  - b) There are likely to be substantial costs regarding remedial works, dealing with topography and the sensitivity of adjacent residential units,
  - c) A zero levy should be applied because of an unrealistic value placed on the lands, the additional costs of the levy will make it difficult to bring the site forward for development, costs have already been incurred by the new owners since 2014, the new owners are being penalised, the levy unfairly reduces the land value and all of this goes against the objectives of the URHA.
- Re-appraise Market Value – the appellant wishes the market value to be reappraised on the following grounds:
    - a) Use – the site has the potential to improve the commercial viability of the town centre, current planning applications have no residential component,
    - b) Viability – if a residential use for the site were the only use deemed suitable for the site, it would not be economically viable to build and deliver residential units,
    - c) Methodology – only the residual value of the land should be used, if the site is considered to be a residential site then the residential value is negative.
  - The appellant states they have not had sight of the valuation process, nor do they know if the valuation was carried out by a competent person, section 12(c) of the Act is quoted.

The appellant hopes the Board can conclude that the site should be considered for the setting of a zero market value, under the terms of the URHA.



## 7.2. Planning Authority Response

There planning authority provide a detailed response that addresses each issue, summarised as follows:

- The site has been confirmed as a Vacant Site by the Board and was assessed as a 'regeneration land' site under the terms of the Act, suitability for the provision of housing is not required.
- The lands were not assessed under section 6(4) of the Act, so demonstration of housing need is not a requirement, section 6(6) is applicable and has been fulfilled.
- The lodgement of planning applications for development of the site is noted and welcomed, but the site has remained vacant for at least 2 years and remains so.
- An appeal concerning site value should have been made to the Valuation Tribunal, it appears the appellant has not done so. In any case, the site valuation was carried by a professional valuer and the appeal procedures were set out in the section 12(4) notice issued to the landowner.

## 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. A Section 7(3) Notice of Entry on the Vacant Sites Register was issued to Pinturas Ltd on the 19 September 2018. Subsequently a Section 9 appeal was made to the Board under appeal reference ABP-302623-18. A detailed assessment as to whether the site constituted a vacant site was carried out by the Reporting Inspector. It was detailed that the site does not include any existing use and therefore, was considered that notwithstanding the stated intention to commence development which was not questioned, that the site could be considered vacant or idle for the purposes of Section 5(1)(b)(i). Most if not all of the structures which have been effectively abandoned within the site are now in a neglected condition and in this regard it is clear and evident that the structures are in a neglected condition as per the test in Section 6(6)(a) of the Act.

8.4.2. The Board confirmed the entry on the vacant Sites Register on the 10 April 2019. 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

8.4.3. The appellant has not submitted any evidence to suggest that the subject site is no longer vacant/idle. Instead they set out in quite some detail that their site should not have been considered for the Register, that ongoing efforts to acquire a planning permission for commercial development have been progressed and also the valuation of the site is queried. 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. Photographic evidence from the Council dated the 8 January 2020 does not indicate any use on the site and illustrates the prevailing condition of the lands. On the day of my site I did observe a small amount of storage activity being carried out in the storerooms of a building that opens up onto the rear car park of the Centra Convenience Store. This building is a two storey building, with no roof tiles, no finish render and boarded up windows. When taken together with the entirety of the site, it could not be said that the majority of the lands were in use. I am satisfied that the majority of the site is not in use and the lands continue to be a vacant site within the terms of the 2015 Act.

8.4.4. Whilst numerous permissions have been granted on the site (most recent application reference number 18/87), fresh construction activity has not commenced. From the site visit, it is evident that the site remains vacant and idle and no recent 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."

## 8.5. Levy Calculation

- 8.5.1. A Notice of Valuation Entered on the Vacant Site Register was issued to Pinturas Ltd on the 18 December 2019 stating that the valuation placed on the site is €1,000,000.
- 8.5.2. 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 28 January 2020 for the value of €1,000,000.
- 8.5.3. The appellant has raised serious questions about the methodology behind the site valuation and reckons that a determination of zero market value should be considered appropriate for the site. The reasons for a zero valuation are set out by the appellant. The planning authority state that an appeal was not taken by the landowner over the site value with the Valuation Tribunal, as detailed by section 13 and 14 of the 2015 Act. Incidentally, I note a handwritten comment on the planning authority's section 15 Report that requests a hold until the valuation appeal period has completed, in accordance with section 13(8) of the 2015 Act. I agree with the planning authority, the time to appeal the market value of the site with the Valuation Tribunal appears to have passed, unless the landowner seeks comfort from section 13(3) of the 2015 Act. A section 15 appeal to the Board concerning a Demand Notice cannot entertain an assessment of the market value, that is for the Valuation Tribunal to consider. I am satisfied that the planning authority have correctly estimated the value of the site by using a suitably qualified person in accordance with the Act and that the value has been confirmed by the Valuation Tribunal without appeal. The value of the site is set at €1,000,000.
- 8.5.4. 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.
- 8.5.5. On a point of detail, not picked up by the appellant, 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 115/2020 that directs 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.

## 9.0 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 1 of January 2019 and was a vacant site on 21 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) 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<sup>st</sup> of January 2019 and was a vacant site on 21 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

14 July 2020