



An
Bord
Pleanála

Inspector's Report ABP-306958-20

Type of Appeal	Appeal against a Section 18 Demand for Payment.
Location	Vacant site at lands west of the R121 Church Road, Kilmartin, Tyrrelstown, Townland of Hollystown, Dublin 15.
Planning Authority	Fingal County Council.
Planning Authority VSL Reg. Ref.	VS/0017.
Site Owner	Glenveagh Homes Limited.
Date of Site Visit	28 October 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 Fingal County Council, stating their demand for a vacant site levy for the year 2019 amounting to €910,000 for vacant site lands west of the R121 Church Road, Kilmartin, Tyrrelstown, Townland of Hollystown, Dublin 15 and identified as VS0017.
- 1.2. The appeal site has one stated registered owner Glenveagh Homes Limited and refers to the company secretary and seven other named associates.
- 1.3. A Notice of Proposed Entry on the Vacant Sites Register was issued to Hasak Limited on the 16 November 2017. On the 28 December 2017, the Notice of Entry on the Vacant Sites Register was issued to Hasak Limited. This section 7(3) notice was appealed to the Board on the 29 January 2018. On the 18 June 2018, the Board confirmed the notice and determined that the site is a vacant site within the meaning of the Act. A section 11(1) Notice to Owner of Site Entered on Vacant Sites Register and Levy to be Charged was issued to Tom O'Brien (receiver of Hasak Limited) on the 31 May 2018.
- 1.4. A valuation pertaining to the site was issued by Fingal County Council on the 31 May 2018. The value of the subject site is stated to be €13,000,000. A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to Glenveagh Homes Limited on the 19 February 2020 for the value of €910,000. The appellant (Glenveagh Homes 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 subject site is located north of Mulhuddart in the emerging Tyrrelstown/Kilmartin area of Dublin 15. The site is positioned north of a large area of public parkland, Tyrrelstown Park. A new secondary school is located to the south of the site and Hollystown Golf Club is to the north. The balance of the large arable field that comprises the site is located to the west.
- 2.2. The subject lands are not accessible from a public road. The site is mostly level and comprises very good arable land, currently in tillage. A smaller portion of the site that

adjoins the park and new secondary school to the south is not in productive use and comprises mostly disturbed ground and is fenced off from a new construction compound to the north.

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) of the Act. A 7(3) Notice was issued 28 December 2017. The site was subsequently entered onto the register 28 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.

3.1.3. Section 17 of the Act 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.*

Subsections set the detail and exceptions in relation to change of ownership.

4.0 Development Plan / Planning History

4.1. The **Fingal County Development Plan 2017 – 2023** is the operative development plan. The site is located on lands that are subject to zoning objective RA – ‘Residential Area - Provide for new residential communities subject to the provision of the necessary social and physical infrastructure’. The lands are identified as LAP

12.B and under Objective Blanchardstown 18 it is stated - Prepare and/or implement the following Local Area Plans and Masterplans during the lifetime of this Plan – Kilmartin LAP.

- 4.2. Chapter 3 of the Development Plan sets out the Council's objective in relation to Vacant Sites. Relevant objectives include:
- Objective PM24 - Identify and secure the redevelopment and regeneration of areas in need of renewal.
 - Objective PM25 - Implement the Vacant Sites Levy for all vacant development sites in the County and prepare and make available a Register of Vacant Sites, as per the requirements of the Urban Regeneration and Housing Act 2015.
- 4.3. The site is also located within the **Kilmartin Local Area Plan 2013**, section 6 of the plan sets out phasing and implementation guidance. The site is subject to a number of elements including: Phase 1, Phase 2, Phase 3, an Avenue, Green Infrastructure Links and Park.
- 4.4. The provision of infrastructure and services in a timely manner is crucial to the achievement of the vision for Kilmartin. The LAP area is divided into 2 separate Development Phasing Areas, with one located east of the R121 on the RA lands containing 2 Phases and one located west of the R121 on RA lands containing 3 Phases. The sequence of phasing is ordered so that development moves from the centre out. Phase 2 West cannot commence until 75% of Phase 1 West has been completed to the satisfaction of the Planning Authority. In addition, Phase 2 East cannot commence until 75% of Phase 1 East has been completed to the satisfaction of the Planning Authority. The phasing arrangements on either side of the R121 are not linked i.e. Phase 2 East can commence prior to Phase 1 West being completed subject to Phase 1 East being developed to the satisfaction of the Planning Authority. The 'LC zoning' is to proceed over the course of Phase 1 and 2 and is to be substantially complete prior to Phase 3 commencing.

5.0 Planning History

- 5.1. Subject site VSL History

ABP-300789-18 - Vacant Site Levy - Appeal S.9. Notice Confirmed on the 18 June 2018 because of the need for housing in the area, the suitability of the site for the provision of housing as demonstrated by the phasing strategy set out in the Kilmartin Local Area Plan 2013, the fact that any constraints to the development of the site are considered to be within the control of the appellant to address and the insufficient reason put forward to cancel entry on the Vacant Sites Register.

No other planning history on site.

Nearby sites:

PA ref: **FW13A/0088** and An Bord Pleanála reference **PL06F.243395**. 177 dwellings with a new link road to the east of Tyrrelstown Educate Together School. October 2014.

An Bord Pleanála reference **ABP-303956-19**. Permission refused for the removal of 2 existing sheds and a silo. Change of use of golf course to residential and open space to consist of 133 no. houses, 120 no. apartments and associated site works. June 2019.

Two reasons for refusal, as follows:

1. The Urban Design Manual – a Best Practice Guide, issued by the Department of the Environment, Heritage and Local Government in 2009, to accompany the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, includes key criteria such as context, connections, inclusivity, variety and distinctiveness. It is considered that the proposed development results in a poor design concept that is substandard in its form, layout and elevational treatment, fails to provide high quality usable open spaces, fails to establish a sense of place, and would result in a substandard form of development lacking in variety and distinctiveness, all of which would lead to conditions injurious to the residential amenities of future occupants.

Furthermore, the layout of the proposed scheme, being dominated by roads and surface car parking, is contrary to the provisions of the Design Manual for Urban Roads and Streets, issued by the Department of the Environment, Community and Local Government and the Department of Transport, Tourism and Sport in 2013. The proposed development would seriously injure the residential amenities of future

occupants, would be contrary to these Ministerial guidelines and would, therefore, be contrary to the proper planning and sustainable development of the area.

2. Section 4.10 of the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, together with Criteria Number 2 (Connections) in the accompanying Design Manual, seeks in the creation of well-connected communities, to minimise the need for car journeys and encourage walking and cycling. Having regard to the lack of meaningful pedestrian and cycle facilities proposed along the site boundary with the R121 regional road, it is considered that any development of the subject lands would be premature pending the provision of these improvement works. The lack of cycle paths along the main access road through to the designated Gaelic Athletic Association lands is also considered unacceptable. Furthermore, it is considered that if developed prior to the carrying out and completion of these improvement works, the proposed development would endanger public safety by reason of a traffic hazard, including hazard to pedestrians and cyclists. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

6.0 Planning Authority Decision

6.1. Register of Vacant Sites Report:

- 6.1.1. First report - Site is zoned 'RA – Residential Area'. There is no planning history associated with the site. No recorded enforcement history. The site is zoned for housing, house and rental prices are detailed, 4,807 applicants on social housing support have detailed Blanchardstown as their preferred area, the proportion of houses for sale/rent is less than 5%; there is a need for housing. The connection of services will be required through other land in the ownership of the landowner. There are no constraints in the Kilmartin LAP to preclude development. The site was vacant or idle for the twelve months concerned. The report includes a detailed criteria assessed for suitability for the VSR and detailed responses in relation to the entirety of section 5(1)(a) and section 6(4) and (5) of the 2015 Act. The Council's report is accompanied by maps, photographs, a housing waiting list assessment by

area, an urban house count survey for the area (2016), a monthly rent report (2014-2017) and a 12 month market based household purchase report (2014-2017).

- 6.1.2. A second report was also prepared in relation to the submissions received on foot of the section 7(1) Notice, despite Council receipt of the submission after the closing date for submissions.
- 6.1.3. A letter issued to the landowner to inform them that due to a change in ownership, there would be a zero charge for 2018.
- 6.1.4. A Chief Executive's Order generated on the 19 February 2020; a section 15 Demand Notice followed.

6.2. Planning Authority Notices:

- 6.2.1. Fingal County Council advised the site owner that the subject site (Planning Authority site ref. VS0017) is now liable for a payment of 7% of its valuation and hence the levy for 2019 is €910,000. Payment terms and methods are outlined.
- 6.2.2. A Notice of Determination of Market Value was issued to Tom O'Brien Receiver of Hasak Limited on the 31 May 2018 stating that the valuation placed on the site is €13,000,000 (thirteen million euro) and instructions to make an appeal to the Valuations Tribunal, accompanied by a map with the site outlined.
- 6.2.3. A section 11(1) Notice to Owner of Site Entered on Vacant Sites Register and Levy to be Charged was issued to Tom O'Brien (receiver of Hasak Limited) on the 31 May 2018.
- 6.2.4. A section 7(3) Notice issued on the 28 December 2017, advising the owner that their site had been placed on the register.
- 6.2.5. A section 7(1) Notice issued on the 16 November 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 Fingal County Council to retain the subject site on the Register and charge the levy. The grounds of the appeal can be summarised as follows:

- The site was not and is not suitable for housing because of deficiencies in water services infrastructure, which have come to light since taking ownership. Correspondence dated 14 February 2020 under section 10(1) of the 2015 Act and addressed to the Council, sets out why the lands should not be considered a vacant site because infrastructural deficits. As part of preparations to lodge a Strategic Housing Application, it turns out that Irish Water (IW) confirmed that there is insufficient capacity in the wastewater network and upgrade is necessary (known by March 2019). Glenveagh Homes continue to progress matters and have sought a Project Works Service Agreement (PWSA) with IW, no response to date. Because of the Board requirements to enter into pre-application consultations and need for an IW PWSA, this has not yet occurred. For the entire period of 2019, the lands have been constrained by infrastructural deficiencies and it follows that the site should never have been considered a vacant site. Of note is that Glenveagh Homes have progressed the development of 170 homes nearby and hope to masterplan in conjunction with Fingal County Council for the entire area in the future.
- The appellant sets out the meaning of a vacant site under section 5(1)(a) of the Act and underlines section 6(5)(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. The link is made between the lack of wastewater networks and the inability of Glenveagh Homes to lodge an SHD pre-application consultation request. This means that the lands cannot accord with section 6(5)(b) of the Act.
- The appellant sets out precedent cases to illustrate where the Board have cancelled an entry because the site did not meet the test for a vacant site in the first instance, ABP-303575 refers. Specifically, the appellant highlights the fact that the Inspector (and Board) considered whether or not the site was a vacant site in the first instance. The Board can take new information into hand, even if it refers to the site in the past and at the time the site was placed on the register. In relation to another precedent example, the appellant refers to ABP-303070, in which the deficiency of wastewater infrastructure was specifically mentioned in a condition of planning for that site.

The appellant has attached a number of appendices that include; notice of demand, a copy of their submission in relation to changed circumstances, record of IW correspondence and copies of Inspector's reports and Board Orders for examples cited.

7.2. Planning Authority Response

The planning authority have provided a response to the appellant's grounds of appeal that include:

Comparisons with regeneration land sites (ABP-303575) cannot be made as the tests for placement on the register are different. Nor can the precedent example of ABP-303070 be considered directly comparable because permission had been granted and the deficiencies identified by condition.

The planning authority confirm that the site can be serviced, there is adequate capacity in the Church Road foul pump station to accommodate surrounding LAP lands. The Report of the Water Services Department of Fingal County Council confirms that the site can be serviced by wastewater services, however, on site foul sewer infrastructure and connections to the network will be required to be put in place by the developer. These works would be agreed under a PWSA with IW.

It is noted that permission was refused on a nearby SHD (303956) made by Glenveagh Homes for 253 residential units because of design flaws not water services deficiencies. The internal reports and correspondence from IW on the application are noted, specifically, IW's contention that proposed connection to IW wastewater networks can be dealt with by condition.

7.3. Further Response

The appellant has provided a response as follows:

The appellant underlines the fact that IW have consistently stated that there is no gravity sewer adjacent to the site and that a suitable connection point must be studied and investigated. The scope and modelling of upgrades for the area continues with no known completion date.

In relation to precedent cases, the appellant clarifies why the examples chosen are good ones despite not being directly comparable. Firstly, that the Board have in the past decided that a site should never have been placed on the register and secondly

that a site should not have been placed on the register specifically because it was not served by public infrastructure.

The capacity of the Church Road pump station is not in question, it is the lack of an IW gravity sewer to convey waste to the station that is in question. It is up to IW to decide what upgrades are required and this has not been done to date.

With regards to the SHD site to the north refused permission and the contents of assessments to do with water services. In that instance Glenveagh Homes were able to secure a Confirmation of Feasibility (CoF) from IW and progress an SHD application, subject to agreement (Statement of Design Acceptance) regarding on site water services infrastructure (self lay pipes, pumping station). This is different to the appeal lands that are still at the scoping stage of a PWSA to determine what is required.

With reference to the Council's Water Services Department report, notwithstanding the availability of capacity at the Church Road pump station, there is no public network from the site. If there were, than an application for development could progress and on site infrastructure agreed with IW, this is not the case as there is no wastewater sewer near the site to facilitate a connection.

The appellant considers the spirit and intent of the 2015 Act, and states that they are committed to development of the site, the charge of a levy would only serve to add cost to housing provision.

8.0 **Assessment**

8.1. **Introduction**

8.2. The Board should note that two other concurrent appeals run alongside this case, reference numbers ABP-306954-20 and ABP-306959-20 refers.

8.3. 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.

8.4. **The site is no longer vacant**

8.4.1. 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 2019.

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

8.5. **Is it a Vacant Site?**

8.5.1. A Section 7(3) Notice of Entry on the Vacant Sites Register was issued on the 28 December 2017. Subsequently a Section 9 appeal was made to the Board under appeal reference ABP-300789-18. A detailed assessment as to whether the site constituted a vacant site was carried out by the Reporting Inspector. It was determined that given the need for housing in the area and the suitability of the site for the provision of housing as demonstrated by the phasing strategy set out in the Kilmartin Local Area Plan 2013, the site could be placed on the register, these matters have not changed and are not challenged by the appellant. However, the appellant does challenge and dispute the Board's decision that any constraints to the development of the site are within their control to address.

8.5.2. I must point out that the original section 7(3) notice was appealed by Tom O'Brien Non-Statutory Receiver of Hasak Limited (the previous owners) before the commencement of section 63 of the Planning and Development (Amendment) Act 2018 (19 July 2018). This has relevance because the question of the vacant or idle status of a site was clarified in law. For instance, if a site had been owned and used for farming before the lands were zoned for residential purposes and before, on or after the commencement of the amendment, then that use can be taken into account and remove the site from the register. I do not think that it is correct in this case to retrospectively apply the amended Act to a situation that has already been decided upon. The precise wording of the Act is now as follows:

- 5. (1) In this Part, a site is a vacant site if—*
- (a) in the case of a site consisting of residential land—*
- (i) the site is situated in an area in which 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 —*
- (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.*

With reference to the current appeal before the Board, the appellant became the owner of the site on the 7 September 2018, thus becoming the most recent purchaser of the site after it became residential land and after the commencement of section 63 of the 2018 Act. Even though the majority of the land is in use for agriculture, and probably has been for some time, the most recent purchase of the lands occurred after it became residential land and after the commencement of section 63 of the 2018 Act. Plainly put, the site can be considered a vacant site as it meets the criteria set out in section 5(1)(a)(iii)(II)(A) and (B) of the 2015 Act (as amended), despite being in use for agriculture.

- 8.5.3. The appellant has cited two precedent cases in order to illustrate their case with regards to the possibility of overturning a previous decision to place a site on the register or to underline their grounds of being an unserviced site. These examples are useful but not directly comparable because in the first case, ABP-303575-19, is a regeneration site and the tests for inclusion do not include lack of public services. In the second instance, ABP-303070-19, it was clear that the site could not be served by public infrastructure during the period concerned. Matters in this case have moved along and infrastructural shortcomings have been resolved. In any case, the appellant is correct it is not unknown for the Board to change course once new information has come to the fore. The precedent examples show little more than this point. The appellant's substantive grounds for appeal revolve around the lack of a direct connection to a gravity foul sewer.
- 8.5.4. The Board confirmed the entry on the vacant Sites Register on the 18 June 2018. However, the appellant has made claims that new information is to hand that confirms the site could not and can not be served by the public infrastructure and facilities necessary to enable housing to be provided and serviced. Specifically, that the site cannot be served by wastewater services because there is no foul gravity sewer on adjacent lands. Despite efforts to advance the preparation and production of material for an SHD application with the Board, Irish Water are not in a position to confirm what upgrades are necessary and the process is paused. The planning authority take a different view and conclude that there are no wastewater services constraints in the area and that the appellant controls the means and design of access and connection to foul gravity sewers.
- 8.5.5. Despite the previous confirmation and order issued by the Board, I am satisfied that new information has come to the fore since the Section 7(3) Notice was issued and that this matter though previously adjudicated on, should be re-examined. I am particularly sensitive to the issue of whether the site was served by the public infrastructure and facilities necessary to enable housing to be provided and serviced, as this forms a key component of section 6(5) of the 2015 Act criteria to accept a site on to the register. In addition, I am aware and the Board will be too, of recent case law where the matter of the timing and delivery of public infrastructure, and its capacity to accept development, was explored. The appellant's premise in the

current appeal now before the Board is that the site has no direct connection to a public gravity foul sewer.

- 8.5.6. Firstly, the appellant states that they are a new owner of the site and that matters raised now were not raised in the initial section 7(3) appeal, this is not their fault. In this regard, I note that the Council corresponded with the new owner under section 17 of the 2015 Act and resolved to charge a zero levy for the year 2018. Neither the appellant or the planning authority raises an issue with this and nor do I.
- 8.5.7. The only substantive reason why the appellant believes that their site is not a vacant site and should not have been entered on the register in the first place is because it lacks direct access to public infrastructure. Specifically, that there is no foul gravity sewer in the vicinity of the site to allow a connection. This contention is supported by correspondence from Irish Water and an underlying view from the appellant that a timeline for knowing what works are required is not available. This all results in the appellant not being in a position to make an SHD application because the necessary documentation cannot be put in place to start the process. The planning authority disagree with all of this and cite an example of a nearby SHD where there was no unsurmountable issue around connection to the wastewater network with capacity for additional development, reference number ABP-303956-19 refers.
- 8.5.8. For ease of reference I shall set out how the appeal site relates to other sites in the vicinity and how it can be shown that as in the initial section 7(3) appeal decision, access to services lies with the appellant. Glenveagh Homes were refused permission for 253 residential units (ABP-303956-19), but not for reasons to do with wastewater infrastructure constraints. This SHD site lies to the east of the appeal site and beyond an adjacent site that is in the control of the appellant and that forms the basis for a similar concurrent section 18 appeal, ABP-306959-20 refers. There is no physical connection between the subject appeal site and the SHD site, but lands in the ownership of the appellant are joined. In addition, another site, to the south east and with portions close to the appeal site was granted permission for 177 residential units (revised down to 172 units), Twinlite Services Limited PL 06F.243395 refers. I direct the Board to paragraph 20 of the appellant's grounds of appeal, where it is stated that Glenveagh Homes have progressed with development of these 170 homes, due for completion in Q4 2020. Judging from this statement it would appear to me that once this site is connected to public infrastructure, then it must follow that

the appeal site could be too. In relation to another site that the appellant has control over, the works necessary to connect to public services have been examined and agreed and this is demonstrated in the documentation from Irish Water that resides in that file, ABP-303956-19 refers. For all intents and purposes, the appellant holds all the relevant lands in their ownership in order to advance the phased development of the area. There are no wastewater capacity constraints in the vicinity, and this is borne out by statements from Irish Water and echoed by Fingal County Council's drainage department.

- 8.5.9. It seems to me that the applicant has the where with all, including ownership of relevant lands, to at least advance the process of engaging with the Board in respect of SHD. Pre-Application Consultation is a mandatory step required prior to making an application for a strategic housing development (SHD) to An Bord Pleanála. Question 19 of the Board's SHD pre-application form in relation to services requires the submission of a current / valid Confirmation of Feasibility statement (CoF) from Irish Water in response to a Pre-Connection Enquiry (PCE) in relation to the proposed development.
- 8.5.10. The appellant has lodged a Pre-Connection Enquiry for over 1,000 residential units and received a Confirmation of Feasibility statement from IW (dated 15 March 2019), that outlines wastewater constraints. The appellant sees this as an obstacle to advancing proposals to develop the land. This is not the case and it is quite routine that when SHD pre-application consultations are made to the Board issues that require to be addressed can arise. It is not uncommon for IW to confirm the feasibility of connection to Irish Water Networks, then go on to specify issues to be addressed. In this instance there are no wastewater network constraints or capacity issues, merely the lack of a proximate gravity foul sewer. I consider that there are no obstacles in place to prevent the appellant progressing the planning side of land development that could ultimately deliver homes that can be serviced by public infrastructure. This is because the appellant is also in control of other lands in the vicinity that act as stepping stones to public service connections. It would appear that any constraints to the development of the site are within the control of the appellant to address. The facts around the ability to service the site have not changed since the site was first placed on the register. The appeal site meets all the criteria set out in section 5(1)(a)(ii) of the 2015 Act (as amended).

8.5.11. The condition and use of the site remains as it was when first placed on the register, despite in use for agriculture, section 5(1)(a)(iii)(II)(A) and (B) are met, note my comments at paragraph 8.5.2 above. The remaining criteria with regard to section 6(4) of the 2015 Act that relates to housing need remains the same as before and unchallenged by the appellant, section 5(1)(a)(i) is met. I am satisfied that the site was and remained a vacant site for the period up to and after placement on the register.

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

8.5.12. 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 in the first place and that ongoing efforts to acquire a planning permission have stalled because of Irish Water's inability to provide a scope of the works necessary for connection to public wastewater services.

8.5.13. From my observations of the site, I can see that very little has changed on the site, for the most part the lands are in use as agricultural lands. As I have explained in section 8.5.2 of my report above, the site is considered to be a vacant site because it accords with section 5(1)(a)(iii)(II)(A) and (B) of the 2015 Act (as amended), despite in use for agriculture. Irrespective of the current situation, no evidence has been provided by the appellant that there has been a material change to the nature or the use of the lands since the Section 7(3) Notice was confirmed and specifically for the period of the charge - 2019. The planning authority do not highlight any works being carried on the site during the relevant period and conclude that things have remained the same. I satisfied that the lands concerned remained vacant during the relevant time period and the appropriate charge can be levied.

8.6. Procedural Matter

8.6.1. 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).

8.7. Levy Calculation

- 8.7.1. A Notice of Determination of Market Value was issued to Tom O'Brien Receiver of Hasak Limited on the 31 May 2018 stating that the valuation placed on the site is €13,000,000 (thirteen million euro). No evidence from the appellant has been submitted to show that this valuation was appealed to the Valuation Tribunal. I also note that a correspondence addressed to Glenveagh Homes dated 21 December 2018 issued by Fingal County Council and stated that following a change of ownership a zero charge would refer to the year 2018.
- 8.7.2. A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to Glenveagh Homes (addressed to the company secretary and seven other named associates) on the 19 February 2020 for the value of €910,000.
- 8.7.3. 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.
- 8.7.4. 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 levy due.

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 18 March 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 need for housing in the area, the suitability of the site for the provision of housing as demonstrated by the phasing strategy set out in the Kilmartin Local Area Plan 2013, the fact that any constraints to the development of the site such as 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 are considered to be within the control of the appellant to address and the insufficient reason put forward to cancel entry on the Vacant Sites Register,
- (e) That the majority of the site is and was vacant for the period concerned,
- (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 during the relevant period, 2019,

the Board is satisfied that the site was a vacant site on the 1 of January 2019 and was a vacant site on 18 March 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

18 November 2020