



An  
Bord  
Pleanála

## Inspector's Report ABP-308659-20

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<b>Type of Appeal</b>	Appeal against a Section 18 Demand for Payment.
<b>Location</b>	Lands at Ballyvaloon, Cobh, Co Cork.
<b>Planning Authority</b>	Cork County Council.
<b>Planning Authority VSL Reg. Ref.</b>	VS0018.
<b>Site Owner</b>	Colm Damery.
<b>Planning Authority Decision</b>	Demand Payment.
<b>Date of Site Visit</b>	10 August 2022.
<b>Inspector</b>	Stephen Rhys Thomas.

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## **1.0 Introduction**

- 1.1. This appeal refers to two separate Section 15 Notices of Demand for Payment of Vacant Site Levy issued by Cork County Council, stating their demand for a vacant site levy for the year 2019 for vacant site lands at Ballyvoloon, Cobh, Co Cork, and identified as VS00018. The notices were issued to Kathleen Damery, the demand refers to Folio Ref: 149381F and Ref: 43503F, and amounts to €35,000. Colm Damery has appealed the Demand for Payment Notice issued pursuant to Section 15 of the Urban Regeneration and Housing Act.
- 1.2. A valuation pertaining to the site is not on file.
- 1.3. Two separate Notices of Proposed Entry on the Vacant Sites Register were issued to Kevin Damery on the 21 November 2017, one with reference to Folio 149381F and the other 43503F.
- 1.4. On the 28 December 2017, a recommendation to place the site on the register was made by the planning authority. No Notice of Entry on the Vacant Sites Register is on file.

## **2.0 Site Location and Description**

- 2.1. The subject site is located within the environs of Cobh in County Cork. The infill site is located along the northern fringes of Cobh, with residential development to all sides.
- 2.2. The site has a curving frontage to the public road along its western boundary and fronts onto a laneway to the rear of Maurice Moore Place to the south. The eastern boundary is defined by the rear boundary walls of housing along Coolamber Drive and the northern boundary comprises hedgerow boundaries to single houses. The site is gently sloping downwards from east to west. The western and southern boundaries are composed of hedgerows with mature trees. The site is currently an active construction site with a number of dwellings in various stages of completion.

## **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 recommendation by the planning authority to issue a Notice under Section 7(1) of the Act. The recommendation 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.

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. The Cork County Development Plan 2014 is the operative development plan and the Cobh Municipal District Local Area Plan 2017 is the operative local plan for the subject appeal. The site is located on lands that were subject to zoning objective CH-R-05 Medium A density residential development.

4.2. Chapter 14 of the Development Plan refers to Zoning and Land Use and includes variation number 1 with reference to implementation of the Vacant Site Levy in residential and regeneration areas as follows:

##### **Vacant Sites Levy**

It is the intention of Cork County Council to implement the provisions of the Urban Regeneration and Housing Act 2015, through the establishment of a Vacant Sites Register, identifying sites on which a vacant site levy can be applied. The planning authority will proactively engage through the Municipal District sub-county structures, to identify suitable vacant sites on lands zoned residential and on lands designated as regeneration areas in this plan, which meet the criteria for inclusion in the vacant site register. This will be achieved through a focused application of the levy, facilitating sustainable urban development and bring such vacant sites and buildings in urban areas into beneficial use.

## Regeneration Areas

The Urban Regeneration and Housing Act 2015, provides for the inclusion of objectives for the development and renewal of areas identified as being in need of regeneration. As part of the preparation of the Local Area Plans, regeneration sites have been identified in many of our towns. The main objective in identifying Regenerations Areas is to draw attention to the opportunities that exist to redevelop key areas within the towns, where such sites have the potential to contribute to the rejuvenation of the towns, deliver housing, and perhaps act as a catalyst for other developments. In accordance with the provisions of the Urban Regeneration and Housing Act 2015, regeneration areas may, in time, be subject to the Vacant Sites Levy where the regeneration area is vacant or idle and this has adverse effects on the amenities / character of the area.

### County Development Plan Objective

#### ZU 5-1 Vacant Site Levy-Residential and Regeneration Areas

Encourage the development and renewal of areas, on lands zoned as residential that meet the criteria as set out in the Urban Regeneration and Housing Act, 2015 and on lands designated as regeneration areas, identified in Municipal District Local Area Plans, having regard to the Core Strategy, that are in need of regeneration, in order to prevent –

- (i) adverse effects on existing amenities in such areas, in particular as a result of the ruinous or neglected condition of any land,
- (ii) urban blight and decay,
- (iii) anti-social behaviour or
- (iv) a shortage of habitable houses or of land suitable for residential use or a mixture of residential and other uses.

#### 4.3. **Cork County Development Plan 2022**

The Cork County Development Plan 2022 is now in effect. The Elected Members of Cork County Council have adopted the Cork County Development Plan 2022-2028 at the Full Council Meeting held on Monday 25th April 2022 and it came into effect on Monday 6th June 2022. Volume 4 South Cork includes references to Cobh and

Volume 1 Main Policy Material references the Vacant Sites Levy for Residential and Regeneration Lands.

## 5.0 Planning History

### 5.1. Subject site:

**21/5603** – 56 residential units on a 1.5Ha site. December 2021. Under construction, not yet complete.

**08/4450** – Variations to a permitted development. Relocation of various houses on the site and substitution of house types.

**07/11984** - Variations to a permitted development. Changes to house types and quantum of development.

**07/6169** – 33 dwelling houses and 13 duplex apartments.

### 5.2. VSL History

**ABP-303850-19** – Demand Confirmed 2 October 2019, at €360 for a site with a Folio reference of 139182F.

## 6.0 Planning Authority Decision

### 6.1. Register of Vacant Sites Report:

6.1.1. Register of Vacant Sites Report (first report) – Site inspection date 15 November 2016. The site is zoned under objective R-05 Z1 Medium A residential development. The planning history of the site is outlined with a number of permissions amending a parent application for 33 dwellings and 13 duplex apartments. The site is not in use for agriculture and appears overgrown and unused. The site is classified as residential land and has been vacant or idle which will be confirmed in 12 months. The report is supported by colour photographs.

6.1.2. Update Report – (Recommendation) Site visit of the 20 November 2017 records no change in the condition of the site. No submission received with reference to the section 7(1) Notice. Recommend placement on the register.

### 6.2. Planning Authority Notice

- 6.2.1. Cork County Council advised the site owner that the subject site (Planning Authority site ref. VS0018) is now liable for a payment of the levy for 2019 (Folio Ref:149381F €31,500 and Folio Ref: 43503F €3,500), a total of 35,000.00 across two land parcels. Payment terms and methods are outlined.
- 6.2.2. The Demand Notice, references a site valuation for the Folio Ref:149381F of €450,000 and €50,000 for Folio Ref: 43503F.
- 6.2.3. A section 7(1) Notice issued on the 21 November 2017, advising the owner that their site had been identified as a vacant site and invited submissions, also accompanied by a site map. The notice references section 5(1)(a) of the 2015 Act, a recommendation to place the site on the register followed, no appeal was received by the Board.

## **7.0 The Appeal**

### **7.1. Grounds of Appeal**

- 7.1.1. The appellant has submitted an appeal to the Board, against the decision of Cork County Council to demand a levy payment for a site that has already been placed on the Register. The grounds of the appeal can be summarised as follows:
- The land has been in the same family for years and was not purchased to develop.
  - No clarification issued from Cork County Council in 2018 regarding the status of the land, after changes.
  - The notification for 2019 was only received in late 2020.
  - There is not a need for housing in Cobh, with three developments ongoing and 47 acres of zoned land nearby.
  - The family are in the process of selling the land.

### **7.2. Planning Authority Response**

- 7.2.1. No invoices were issued in 2019, because the two sites had changed ownership.
- 7.2.2. In order to accommodate Covid 19 constraints, invoices for 2020 were deferred until late 2020.

7.2.3. All invoices were issued in accordance with 2015 Act.

## 8.0 **Assessment**

### 8.1. **Introduction**

8.1.1. This current 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 1<sup>st</sup> 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.

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

8.2.1. 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 recommendation to serve a 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 1<sup>st</sup> of January in the year concerned, in this case 2019.

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

8.3.1. A recommendation to serve a Section 7(3) Notice of Entry on the Vacant Sites Register was issued on the 28 December 2017. No Section 9 appeal was made to the Board. The appellant has now questioned the characteristics of the lands in terms of its qualification as a vacant site under the terms of the 2015 Act, in their view there is no demand for housing in Cobh. The appellant also queries the timing of communications from the Council with regard to demand for payment notices.

8.3.2. In terms of the notices issued by the planning authority, I can see that only the section 7(1) notice has been submitted. For the purposes of completeness, it would have been useful to have sight of the section 7(3) Notices for the lands concerned, but I do not see it as a major obstacle to reaching a conclusion for this appeal.

8.3.3. Firstly, it is relevant to note that the lands concerned received a permission for 56 dwellings in December 2021 and those units are currently under construction. In my



mind such events contradict the appellant's contention that there is not a demand for housing in Cobh. The site is suitable for housing and there is a need for housing, the construction of dwellings demonstrates this and sections 5(1)(a)(i) and (ii) of the 2015 Act are met.

- 8.3.4. The appellant has not advanced a use for the lands in question. There is no information on file to explain the condition of the site during 2019 and the rationale for the Demand for Payment Notice. However, the owner is more concerned with the timing of the demand notice and the imminent process of disposing of the site. Which at the time of the notice was in the process of being readied for sale. The demand from the planning authority seeks payment for 2019, evidently a year that the site was still vacant after a change in ownership and a zero charge had issued for previous years.
- 8.3.5. The site was initially placed on the register in December 2017 and the majority of the site was considered vacant for the period of twelve months prior to that date. The assessments provided by the planning authority provide the basis for the decision to place the site on the register and I find them to comply with the requirements of the 2015 Act in relation to residential land. The owner did not appeal this decision of the planning authority; however, they do reference an appeal in 2018 but I can find no record of that. Other than a section 18 appeal that was unsuccessful and that demand was confirmed, ABP-303850-19 refers. I am satisfied that the site was correctly entered onto the register as a vacant site under the criteria of a residential site and the planning authority used the proper mechanisms to do so. The lands were vacant at the time of placement on the register and so the site qualifies as a vacant site under the terms of the 2015 Act.

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

- 8.3.6. The appellant has not set out any grounds of appeal to suggest that the site in question was in use for the period of 2019. The main and only grounds of appeal put forward by the appellant relate to the need for housing in Cobh generally. A matter I have dealt with under section 8.3 of my report.
- 8.3.7. I have observed that the physical condition of the site has altered completely since the site was placed on the register and subsequent to a permission dated December 2021, housing is now under construction. I conclude from this sequence of events

that it is highly likely that during 2019 and before planning permission was granted, the site remained vacant, a status that prompted the planning authority to issue a demand for payment notice. This notice is now the subject of an appeal. The appellant does not make any case to demonstrate that the site was no longer vacant and cites inconvenience caused by the timing of correspondence issued by the planning authority. A matter that the planning authority states was in relation to the burden of Covid restrictions and this is acceptable.

- 8.3.8. Reference is made to the disposal of the site, however, no further references are made to this action. It is possible that some form of change of ownership did occur in 2019 in order to prompt the preparation and submission of a planning application in 2021. A matter that requires greater investigation because there is nothing on the file to suggest this, and the latest date of correspondence on the subject file is from January 2021. To assist the Board, I have resorted to the planning application documentation with regards to PA reference 21/5603 and find that a letter of consent was submitted by Kathleen Damery (Folio ref CK43503F and CK49381F) informing the planning authority that HRP Construction Limited are permitted to lodge an application on the lands concerned. It would seem that ownership did not change and that the lands were still in the ownership of Kathleen Damery, until at least 4 June 2021 (the date of the consent correspondence) and after the date the appeal was lodged (11 November 2020). Neither the appellant or the planning authority point to a more recent change of ownership, other than that which occurred in 2017 and that prompted a zero charge for 2018. A matter explained by the planning authority in correspondence received by the Board January 2021. I am satisfied that a more recent change of ownership did not occur and the restrictions of section 17 of the 2015 with reference to death or change of ownership do not apply in this case.
- 8.3.9. The appellant has not put forward any use for the site over the relevant period. My observations of the site show that the lands are now under development for housing, however, no actual use for the lands has been demonstrated for the period concerned. I am satisfied that the site was vacant or idle for the year 2019, the levy should be charged for 2019. However, given that the lands are currently under construction for housing, notwithstanding the obligation on the owner, the planning authority should give consideration to section 10 of the 2015 Act, and specifically section 10(2) that states:

*(2) If, at any time, a planning authority is satisfied that a site that stands entered on the register under section 6(2) is no longer a vacant site it shall cancel the entry on the register in respect of that site.*

#### **8.4. Levy Calculation**

- 8.4.1. The planning authority have explained that an independent valuer assessed the market value of sites in the county. The demand for payment notices outline that the value assigned to each site was as follows: a site valuation for the Folio Ref:149381F of €450,000 and €50,000 for Folio Ref: 43503F. This equates to a total valuation of €500,000. No evidence from the appellant has been submitted to show that this valuation was appealed to the Valuation Tribunal.
- 8.4.2. Two separate Notices of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act were issued to Kathleen Damery on the 14 October 2020 for a total value of €35,000.
- 8.4.3. 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. 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 now 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 January 2019, and was a vacant site on the 11 November 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 lack of information to show that the site was no longer a vacate site within the meaning of the Urban Regeneration and Housing Act 2015, as amended, on the 1 January 2019, or that the amount of the levy has been incorrectly calculated in respect of the site by the planning authority, and the site continued to be a vacant site on the day that the appeal was made.

The demand for payment of the vacant site levy as calculated by the planning authority under section 15 of the Urban Regeneration and Housing Act 2015, as amended, is, therefore, confirmed.

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Stephen Rhys Thomas  
Senior Planning Inspector

August 2022