



An  
Bord  
Pleanála

## Inspector's Report ABP-308733-20

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<b>Type of Appeal</b>	Appeal against a Section 18 Demand for Payment (SD/VS365)
<b>Location</b>	Lands at Mill Road, Saggart, County Dublin.
<b>Planning Authority</b>	South Dublin County Council
<b>Planning Authority VSL Reg. Ref.</b>	SD/VS365
<b>Site Owner</b>	Jackie Cosgrave.
<b>Planning Authority Decision</b>	Charge Levy
<b>Date of Site Visit</b>	15 September 2021.
<b>Inspector</b>	Stephen Rhys Thomas

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## 1.0 Introduction

- 1.1. This appeal refers to a Section 15 Notice of Demand for Payment of Vacant Site Levy issued by South Dublin County Council, stating their demand for a vacant site levy for the year 2020 amounting to €126,000 for vacant site at the Mill Road, Saggart, Co Dublin, and identified as SD/VS365. The Notices are addressed to Jackie Cosgrave.
- 1.2. A Notice of Proposed Entry on the Vacant Sites Register was issued to Jackie Cosgrave on the 31 October 2018. On the 18 December 2018, the Notice of Entry on the Vacant Sites Register was issued. This section 7(3) notice was appealed to the Board on the 23 January 2019. On the 7 August 2019, the Board confirmed the notice and determined that the site is a vacant site within the meaning of the Act.
- 1.3. A valuation pertaining to the site was issued by South Dublin County Council on the 16 October 2019. The value of the subject site is stated to be €1,800,000. A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to Jackie Cosgrave on the 20 October 2020 for the value of €126,000. The appellant 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 comprises an area of land to the rear of existing dwellings that front Mill Road which is located between Saggart Village and the N7 to the north. The site cannot be readily viewed from the public road. It has an access onto Mill Road between two existing residential properties. It is adjoined on its remaining boundaries by Citywest Golf Club. The site is currently inaccessible with fencing and hedging forming its boundary with the public road.

## 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 section 7(3) Notice was issued 18 December 2018 and the site was subsequently entered onto the register on that date.

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.*

### 3.2. Development Plan - South Dublin County Development Plan 2016-2022

3.2.1. The site is zoned RES-N in the County Development Plan the objective of which is to provide for new residential communities in accordance with approved area plans.

3.2.2. With regard to the vacant site register, the South Dublin County Council Development Plan 2016-2022 was varied (Variation 1 & 2) on 21st May 2018 with Chapter 11 varied to include Section 11.1.2 which provides that lands zoned Objective RES and RES-N are included for the purposes of Residential as defined in the 2015 Act.

## 4.0 Planning History

### 4.1. VSL history:

Ref: **ABP-303527-19** - Appeal against Entry on the Vacant Site Register. Notice Confirmed.

#### 4.2. **Site history:**

Ref. **SD13A/0221** – Permission granted for demolition of dwelling and development of 44 residential units with a new entrance/exit into Mill Road with extension of duration granted until July 2023.

Ref. **SD15A/0086** – permission refused for modifications to above permission.

### 5.0 **Planning Authority Decision**

#### 5.1. **Planning Authority Reports**

- 5.1.1. The PA reports are not on the subject file, but according to the section 9 appeal Inspector's Report on this site, the planning authority's initial report is reproduced as follows:
- 5.1.2. *An initial site inspection report which is dated 30 October 2018 responds to a series of questions and outlines that site is in an area where there is a need for housing, that the site has been vacant or idle from last 12 months. That site is adequately serviced and there is not anything affecting the physical condition of the land to make it unsuitable for housing. It is stated that the site is a residential site. It is stated that it is proposed for entry onto the VSR and photos of the site are attached.*
- 5.1.3. *A response to same was submitted on behalf of the owner and notes that there is an extant permission on the site which is to be imminently implemented with agreement required on a number of conditions on the permission including the entrance arrangements which were significantly altered and the proposed contractor has been engaged on another site with the site not vacant or idle as the owner is actively working to implement the permission.*
- 5.1.4. *A second PA report, entitled Register of Vacant Sites Planning Report and which is dated 18th December 2018 refers to inspection dates of 6 September 2016 and 30 October 2018. It outlines the site details, location, planning history, zoning and ownership and the responses to the Section 7(1) Notice received are summarised. It comments that the site comprises an undeveloped greenfield site to the rear of existing houses which front onto Mill Road and includes frontage onto Mill Road. It states that there was no evidence of any recent activity on site at the time of the site visit and the site entrance appeared to be overgrown and unkempt.*

- 5.1.5. *It states that the submission received has been considered by the PA with any proposals to develop are noted but that proposals alone are insufficient to determine that a site is no longer vacant or idle. Considered that sufficient time has elapsed since then within which to commence the development notwithstanding issues referred to. It states that it has not been demonstrated to the satisfaction of the PA that the site or majority of the site has not been vacant or idle for the preceding 12 months.*
- 5.1.6. *In relation to housing need reference is made to the core strategy and likely need for 32,132 units in SDC between 2015-2022 with the interim housing strategy forecasting that 8,303 social housing units will be required for the period 2016-2022. The average rent in SDC in 2018 including year on year change according to the Daft.ie rental price report Q3 2018 for South County Dublin is €2,156 (10.3% increase) and West Dublin €1,745 (12.5% increase) with combined average €1,950. The median purchase price for a dwelling in South Dublin, according to the CSO market-based household purchases of residential dwelling has risen from €249,700 in 2014 to €320,000 in 2017. The number of household on the housing list at year end in South Dublin was 8,944 in 2015 and 8,040 in 2018. 621 persons were on the homeless register in September 2018. There are 98,387 existing residential units in the County, based on CSO Census 2016 figures. An analysis of daft.ie on 13 December 2018 reveal 782 properties available for sale and 128 properties available for rent in the County (margin of error included where areas are shared with other local authorities). The proportion of properties that are available for sale and/or to rent as a percentage of the overall housing stock in the County is 0.9%. It is determined that from the information outlined that there is a need for housing in the area.*
- 5.1.7. *In relation to suitability for housing, site is zoned for residential use and located within designated 'emerging moderate sustainable growth town' of Saggart-Citywest in the core strategy of the SDCC Development Plan 2016-2022. Site is within the established built up area of Saggart and is adequately serviced by public infrastructure and facilities. It is stated that there is no evidence of anything affecting the physical condition of the land comprising the site which would affect the provision of housing and site therefore considered suitable for housing.*

5.1.8. *Site or majority of site is stated to be vacant or idle and has been vacant or idle for the last 12 months. The recommendation outlines that the site comprises of undeveloped greenfield lands between Saggart Village and Rathcoole/Naas Road off Mill Road where there is existing housing and existing public services and facilities are available. Site zoned for residential development in SDCC 2016-2022 with planning permission in place since March 2014 and site satisfies criteria of Section 5(1)(a) and is a vacant site which is suitable for residential and should be entered on the Register.*

## **5.2. Planning Authority Notices:**

5.2.1. South Dublin County Council advised the site owner that the subject site (Planning Authority site ref. SD/VS365), stands on the VSR and is now liable for a payment of the levy for 2020 of €126,000 (Demand Notice). Payment terms and methods are outlined.

5.2.2. A Notice of Determination of Market Value was issued to Jackie Cosgrave on the 16 October 2019 stating that the valuation placed on the site is €1,800,000 and instructions to make an appeal to the Valuations Tribunal.

5.2.3. A section 7(3) Notice issued on the 18 December 2018, advising the owner that their site had been placed on the register.

5.2.4. A section 7(1) Notice issued on the 31 October 2018, advising the owner that their site had been identified as a vacant site and invited submissions, accompanied by a site map.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

6.1.1. The landowner has submitted an appeal to the Board, against the decision of South Dublin County Council to retain the subject site on the Register and charge the levy. The grounds of the appeal can be summarised as follows:

Planning permission was granted and the time period extended to develop the site for housing. The owner has taken steps to progress the permission, such as:

- Attempts to secure the provision of a pedestrian access way adjacent to 5 Mill Road and come to agreement with numbers 3, 4 and 5 Mill Road in connection with rear boundary walls. An issue arose in relation to 2 Mill Road and legal negotiations have followed and have been finalised in October 2020 after purchase of 2 Mill Road. The owner can now comply with all planning conditions attached to SD13A/0221.
- A contractor has been appointed to commence works once all pre-development conditions are complied with.
- The lands remain fit for agricultural use, and grass has been cut on the site at necessary times. The lands are blocked from public access and there have been no reports of antisocial behaviour.
- Financial expenses have been outlaid to progress the site during the last 12 months (during 2020).

The appeal is supported by land registry documentation, property maps, google images, vacant site map, Law Society of Ireland, Conditions of Sale document, SDCC planning permission documents (SD13A/0221/EP)

## 6.2. Planning Authority Response

- 6.2.1. The planning authority have provided a response to the appellant's grounds of appeal that includes the view of the planning authority that they confirm their original decision on this site. The planning authority's correspondence of 11 December 2020, refers to an email (dated 9 December 2020) that includes all the reasoning for the inclusion of the site on the register. This email does not appear on the file but all other documentation enables a satisfactory analysis of the case.

## 7.0 Assessment

### 7.1. Introduction

- 7.2. The appeal on hand 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.

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

7.3.1. 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)(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 2020.

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

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

7.4.1. A Section 7(3) Notice of Entry on the Vacant Sites Register was issued on the 18 December 2018. Subsequently a Section 9 appeal was made to the Board under appeal reference ABP-303527-19. A detailed assessment as to whether the site constituted a vacant site was carried out by the Reporting Inspector. It was determined by the Board that given the information submitted, the grounds of appeal and the report of the Inspector, the site could be placed on the register. The owner asserts that matters have changed since the site was placed on the register. In particular, the owner sets out how ownership and legal issues have delayed bringing the site to construction. I address these contentions in the next section of my report. However, I am satisfied that no new information has come to the fore since the Section 7(3) Notice was issued and that the matter of vacancy has already been adjudicated on and should not be re-examined. I do not intend to revisit the decision to place the site on the register, there is no strong opposition from any quarter to the reasoning for the placement of the site on the register in the first place.

#### The site is no longer vacant as of the 1st of January 2020

7.4.2. The owner has not advanced any actual use for the site for the year concerned 2020. Though a grass cutting regime and a secure fenced appearance has been advanced by the owner to show that no anti-social behaviour is experienced by the

general area, no actual use has been advanced. Ordinary maintenance and fencing is not a factor that is considered relevant to a site placed on the register under section 5(1)(a) of the 2015 Act, as this site has been. The appearance of a site and occurrence of antisocial behaviour is a matter considered for regeneration sites under section 6(6) of the 2015 Act.

- 7.4.3. The substantial matters that arise from the appeal grounds refer to the owner's efforts of getting the site ready for development from a legal and ownership point of view. The owner outlines a protracted process of obtaining legal agreements from neighbours and obtaining ownership of a neighbouring property to allow the permitted development to proceed. This work has taken time and occurred during 2020 and it is this type of work that the owner claims should protect the site from the levy. The owner has it in mind that because a contractor has been appointed, actual works will occur on site once all planning conditions have been complied with.
- 7.4.4. I can appreciate that bringing a site to full readiness in advance of building works can take time and protracted legal issues and acquisition matters forms part of this. However, these are all administrative and legal matters, none of which can be viewed through the narrow focus of the 2015 Act as an actual use for the site. Even though the site has a planning permission associated with it, this should not be a consideration in determining whether to apply the levy. The site met the criteria for a vacant site in respect of residential land, so the levy may be applied.
- 7.4.5. The owner highlights that the site is available for agricultural purposes and that the grass on site is cut when required. However, the owner does not explicitly state that during the year 2020, actual farming activity was carried out on site. I do not consider that grass cutting and securely fencing the site is a use for the site in itself, but merely a matter of responsible maintenance and due care for lands in their ownership. The criteria used to assess whether a site should be placed on the register in relation to residential lands is set out under section 6(4) and 6(5) of the 2015 Act and none of those criteria refer to the appearance of the lands in question. The appearance, the matter of antisocial behaviour or a reduction in housing in the area are all matters that refer to regeneration lands under section 6(6) of the 2015 Act and so the owner's contention that the site is securely fenced against antisocial behaviour and that the grass is cut from time to time is of no merit in this instance.

7.4.6. Based upon the lack of any evidence to show that the site was in active use during 2020 or at the time the appeal was made (17 November 2020), I am satisfied that for the period concerned, 2020, the site remained a vacant site for the purposes of the 2015 Act and enables a charge to be levied.

## 7.5. Levy Calculation

7.5.1. A Notice of Determination of Market Value was issued to Jackie Cosgrove on the 16 October 2019 stating that the valuation placed on the site is €1,800,000. No evidence from the appellant has been submitted to show that this valuation was appealed to the Valuation Tribunal.

7.5.2. A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to Jackie Cosgrove on the 20 October 2020 for the value of €126,000.

7.5.3. 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.

## 8.0 Recommendation

8.1. 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 2020 and was a vacant site on 29 March 2021, 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.

## 9.0 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 2020, 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

22 September 2021