



An
Bord
Pleanála

Inspector's Report ABP-309023-20

Type of Appeal	Section 18 appeal against a Demand for Payment.
Location	Lands at Henry Street, Roscommon, Co Roscommon.
Planning Authority	Roscommon County Council.
Planning Authority VSL Reg. Ref.	VS/RO/18/6.
Site Owner	Patrick and Ann Naughton.
Date of Site Visit	10 July and 01 October 2021.
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 Roscommon County Council, stating their demand for a vacant site levy for the year 2020 amounting to €8,750 for a vacant site in the townland of Ballypheasan, Roscommon and identified as VS/RO/18/6.
- 1.2. The appeal site has a stated registered owner Patrick and Ann Naughton.
- 1.3. On the 20 June 2018, the Notice of Entry on the Vacant Sites Register was issued to Patrick and Ann Naughton and Colman Lynch. This section 7(3) notice was not appealed to the Board.
- 1.4. A valuation pertaining to the site was issued to Patrick and Ann Naughton by Roscommon County Council on the 4 September 2018. The value of the subject site is stated to be €125,000. A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to Patrick and Ann Naughton on the 30 November 2020 for the value of €8,750. The owner (Patrick and Ann Naughton) 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 is located at the junction of Bank Gardens with Henry Street in the town of Roscommon in County Roscommon. The site is large and rectangular in shape its boundaries with the public road comprise high walls and the vehicular entrance is from Henry Street. The surrounding area is characterised by mainly residential properties set back from the street or terraced housing at the back of the footpath. There are some warehouse businesses in the area and a church set in its graveyard with ancillary buildings is located across Henry Street to the east. The area is characterised by terraced housing, business premisses and institutional buildings.
- 2.2. The rear yard of the site cannot be viewed from the public road. The building and concourse that fronts onto Henry Street is highly visible, here the buildings and boundary treatments are in poor condition. The main buildings are in a slightly better condition, visually, than the boundary walls to Henry Street, these are streaked with corrosion from the wire mesh fence above. The rear yard of the property has a collection of furniture stored unprotected from the elements. There is a large amount

of furniture, books and other household items stored in the main warehouse building, together with a mini-digger.

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 20 June 2018 under a section 7(3) of the 2015 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 / Planning History

4.1. The site is zoned Peripheral Town Centre (TC2) in the Roscommon Town Local Area Plan 2014-2022. Objectives for TC2 include:

- Provide for the development of mixed-use neighbourhood areas containing a mixture of residential, retail and commercial facilities in an integrated, sustainable setting.
- Provide for a range of residential and commercial facilities within an attractive accessible environment with adequate provision for associated vehicular requirements – including parking and loading/unloading.
- Improve civic amenity by requiring high standards of urban design.
- Encourage the regeneration of derelict buildings and appropriate development on infill sites, including residential development and upper floor apartments.
- Regulate where appropriate any subdivision of existing residential units.

- Prohibit disorderly development of backlands.
- Have regard to ACAs and the overall heritage of the area.
- New development in this zone should not prejudice the viability of established land uses.
- Require the inclusion of appropriate open spaces in development in this zone.

4.2. The site is identified as Objective 11 - regeneration/redevelopment in figure 6 Preferred Development Strategy for Roscommon town in the current LAP.

4.3. Roscommon County Development Plan 2014-2020 – Variation 1

Section 2.3.9 Key Challenges - The Roscommon County Development Plan includes explanatory text and objectives concerning the introduction of the Levy and mapping provided within the Area Plans highlights those broad “regeneration” and “residential” areas within which individual sites, should they meet various criteria, attract the Vacant Site Levy.

Retail Policy 3.21 - Promote initiatives or programmes to enhance the character and urban design quality of the County’s towns to ensure that they remain attractive for investment in commerce and in retailing, through, for example, the use of urban design frameworks and town enhancement plans to release state funding and the utilisation of site activation measures such as the Vacant Sites Levy.

5.0 Planning History

5.1. Planning history on the site.

No implementable planning permissions on site.

6.0 Planning Authority Decision

6.1. Register of Vacant Sites Report:

A Vacant Site Assessment Report (14 May 2018, this report is duplicated in the file documentation) outlining the date of the visits to the site (29 November 2017 and 5 December 2018), the site area, zoning and the type of site for the purposes of the Act which in this case is Regeneration. The planning history is outlined and it is

noted that there is no extant permission for development. This report is duplicated in the file documentation.

It is stated that the subject site is not in commercial use, the site is neglected and this is having an effect on the character of the area.

A submission was made to the planning authority and referred only to a change in ownership.

The documentation is supported by separate photographic surveys dated 4 December 2020 and 6 November 2019.

6.2. Planning Authority Notices:

- 6.2.1. Roscommon County Council advised the site owner that the subject site (Planning Authority site ref. VS/RO/18/6) is now liable for a payment of 7% of its valuation and hence the levy for 2020 is €8,750, dated 30 November 2020. Payment terms and methods are outlined. In addition, the amount outstanding for 2019 is also due and the total levy charge is €17,500.
- 6.2.2. Roscommon County Council advised the site owner that the subject site (Planning Authority site ref. VS/RO/18/6) is now liable for a payment of 7% of its valuation and hence the levy for 2019 is €8,750, dated 25 November 2019. Payment terms and methods are outlined.
- 6.2.3. A Notice of Determination of Market Value was issued to Patrick and Ann Naughton on the 4 September 2018 stating that the valuation placed on the site is €125,000 and instructions to make an appeal to the Valuations Tribunal.
- 6.2.4. A section 7(3) Notice issued on the 30 June 2018, advising the owner that their site had been placed on the register. The notice references sections 5(1)(a) and 5(1)(b) of the 2015 Act.

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 Roscommon 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 property has been leased as a storage facility to Oak Foundation Social Enterprise Company Limited since 19 March 2019, a tenancy agreement accompanies the claim.
- The planning authority were advised in October 2019 that the building was in use, according to their inspections the site was still vacant under the meaning of the Act. However, no internal inspection was made by the planning authority otherwise they would have observed that the building was in full use.
- Bank records show a monthly rent received of €600 from the tenants. In addition, the owner has received a commercial rates demand from the Council.
- The owner cites both section 5(1)(a) and 5(1)(b) of the 2015 Act to demonstrate the site does not qualify, as the site is not vacant.

The appellant has attached a number of appendices that include; a copy of the demand notice, copy of the lease to the Oak Foundation, copy of a letter to Roscommon County Council re the letting of the unit, copies of a declaration to Roscommon County Council (owner and tenant), rates notice, bank statements and photographs.

7.2. **Planning Authority Response**

None received.

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)(a) and 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 issued on the 30 June 2018, advising the owner that their site had been placed on the register. No appeal was made to the Board. The appellant does not strongly suggest that the site was never vacant but makes the point that in early 2019, the building was leased to the Oak Foundation for storage purposes. I observed this fact on the day of my site visit. The main warehouse building was full of furniture, books and other household objects, the rear yard was also in use for outdoor storage. My observations of the warehouse interior and its contents agree with the photographs submitted by the appellant.

8.4.2. I note that the initial section 7(1) notice and subsequent 7(3) and 12(4) notices served on the property owner, all referred to sections 5(1)(a) and 5(1)(b) of the 2015 Act. Section 5(1)(a) refers to residential lands and section 5(1)(b) refers to regeneration lands, the Board will know that notices have caused problems in the past. In some cases, notices have not referred to either section 5(1)(a) or 5(1)(b) but simply that a site is placed on the register. In other cases, especially in the early stages of the Vacant Sites Levy process, notices referred to regeneration lands when they should have referred to residential lands or vice versa, these were errors and in the interests of natural justice, sites were cancelled. The subject case is slightly different, the notices all refer to both residential/regeneration lands in the same sentence. In addition, I note that the site is identified as Objective 11 regeneration/redevelopment in figure 6 Preferred Development Strategy for Roscommon town in the current LAP. It is clear that these lands and others in the vicinity are regeneration sites for the purposes of the 2015 Act, and it is in this scenario that the planning authority selected the site as regeneration lands.

- 8.4.3. I can see that a submission was received by the planning authority after the section 7(1) notice, but that submission related only to a change of ownership. The section 7(3) notice was not appealed by the owner, so I cannot tell if the owner was hampered because of the notice and the information it contained. I can see that the planning authority assessed the site in the context of a regeneration site and applied those tests to determine if the site should be placed on the register and I do not question that process. I am satisfied that all parties to the appeal were clear about what type of site this is for the purposes of the 2015, it is a regeneration site and the criteria of section 5(1)(b) applied at the time of entry and the same applies now.
- 8.4.4. Finally, I note that the appellant in their grounds of appeal, references the fact that section 5(1)(a) for residential does not apply to their site. On balance, the fact that all the notices issued to the owner referred to both residential and regeneration sites is probably not misleading in the same way that a notice that identified a site incorrectly as one or the other would be. In this instance I do not suggest the initial formal notice procedure was faulty, but in future any notices issued should only refer to either residential or regeneration lands. This is best practice and a format used successfully by other local authorities.
- 8.4.5. The main issue of this appeal, refers to the status of the site in 2020 and it is that matter I deal with next.

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

- 8.4.6. The main and only grounds of appeal put forward by the appellant relate to the fact that the site has been leased for storage purposes since March 2019. A lease agreement, bank statements showing rent paid and photographs submitted by the appellant substantiate their claim that the site was in use during 2019 and continues to be so, the site therefore is not vacant.
- 8.4.7. The planning authority do not identify a use for this site and so move on to the next criteria of a regeneration site to determine if it should be placed on the register. In addition to vacancy, it is the condition of the site that has prompted the planning authority to charge the levy. In many respects, I would agree, the condition of the site and the buildings on it, are tired and lack care and attention from a maintenance perspective. However, the appellant states that the site is in use for storage purposes, hence the site is not vacant. With reference to a section 18 appeal, the

2015 Act asks whether a site is a vacant site and so it follows that all the previous criteria that refer to a vacant (regeneration) site, must be met only if the site is vacant/idle. In this case the appellant claims that the site is in use for storage, it was since March 2019 and on the date the appeal was made 22 December 2020. Amongst the documentation submitted by the planning authority are a series of photographs, dated 4 December 2020 and signed by the Senior Executive Planner. The photographs show internal views of rooms in disarray but containing a variety of articles and external images that show a lack of maintenance and dilapidation. Other photographs dated 10 July 2019 and 6 November 2019 again captured by the planning authority, show the external condition of the site alone. These are interesting points to observe because the appellant claims that no internal inspections took place. They did, on the 4 December 2020, before the appeal was lodged. That point asides, the appellant has also supplied internal photographs that seem to show an orderly storage of items. From my own observations of the warehouse interior, though the storage of a variety of household objects is haphazard and untidy at best, I conclude that the site is in use and was in use when the appeal was made.

- 8.4.8. In terms of a regeneration site, this presents an interesting case to consider. I have no doubt that the condition of the buildings on site and the lands themselves are poorly maintained and affect the character of the area. However, it is the question of vacancy that is first and foremost in the eyes of the appellant and the law. Within the terms of the 2015 Act, the burden of showing that the site was no longer a vacant site on 1 January in the year concerned is on the owner. However, there are two avenues open to the Board, they may determine whether the site was a vacant site on the 1 January in the year concerned or was no longer a vacant site on the date on which the appeal was made. The appeal was lodged 22 December 2020. Under section 18(3) the 2015 Act states:

Where the Board determines that a site was no longer a vacant site on 1 January in the year concerned, or is no longer a vacant site on the date on which the appeal under this section is made, it shall give written notice to the planning authority who shall cancel the entry on the register in respect of that site and shall cancel the demand made in respect of that year.

8.4.9. By placement of an 'or' between the 1 January and the date the appeal was made, the Board may determine the appeal on either basis. In this instance the latter is the case and during 2019 and into 2020 the site may well have been vacant or its use questionable as illustrated by the planning authority photographs. However, by the time that the appeal was made and judging by the more ordered appearance illustrated by the photographs supplied by the appellant, the site was no longer vacant or idle. I have to accept that the site was not vacant, as illustrated by the photographs taken by the appellant and other documentation submitted, including a rent roll and a Council Rates Invoice for 2020. In addition, the use of the site is confirmed by my own observations of the site, albeit in July and October 2021. On balance, I am satisfied that the site was neither vacant nor idle on the day on which the appeal was made. Even though the site appears shabby and poorly maintained, it is in use and should be removed from the register and the charge not applied for 2020.

8.5. **Procedural Matter**

8.5.1. The planning authority has notified the owner under the title of a section 15(4) Demand for Payment Notice, of a requirement for the payment of a levy for 2020 and 2019, dated 30 November 2020. The time to appeal the earlier section 15(4) Notice, dated 25 November 2019 that relates to this site concerning the levy period 2019 has passed. The current appeal relates to the levy year 2020 and I have not considered any matters that concern the levy charge year 2019, because the time for the making of an appeal has passed. If the Board are minded to cancel the levy charge for the year 2020, it does not mean that the levy charge for 2019 is also cancelled and should still be pursued by the planning authority using the courts as allowed for by the 2015 Act.

8.6. **Levy Calculation**

8.6.1. A Notice of Determination of Market Value was issued to Patrick and Ann Naughton on the 4 September 2018 stating that the valuation placed on the site is €125,000. No evidence from the appellant has been submitted to show that this valuation was appealed to the Valuation Tribunal.

8.6.2. A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to Patrick and Ann Naughton on the 30

November 2020 for the value of €8,750. 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 for a single levy year. However, the Notice also highlights that €8,750 is due for the levy year 2019 and the total amount due is €17,500, this is not correct.

8.6.3. I am of the view that the planning authority are not right to demand a combined amount for 2019 and 2020 in a single notice. It is my opinion that a vacant site levy should be charged and demanded each year and that any outstanding amounts should be collected by the planning authority using other means. It is my interpretation of the 2015 Act, that the planning authority must make a separate demand for each year that the site stands on the register. The 2015 Act provides an opportunity after each yearly demand for the owner to appeal and if successful the Board are empowered to give notice to the planning authority and cancel the entry on the register in respect of that site and cancel the demand made in respect of that year, section 18 of the 2015 Act refers. In terms of the planning authority's responsibility, section 15 of the 2015 Act states:

(1) Subject to subsection (2), there shall be charged and levied for each year beginning with 2018 in respect of each vacant site in relation to which a market value has been determined in accordance with section 12 and that stands entered on the register a levy to be known as vacant site levy.

(2) Vacant site levy shall not be payable in respect of any land in respect of which the derelict sites levy within the meaning of the Derelict Sites Act 1990 is payable in accordance with that Act

(3) Vacant site levy shall be payable in arrears each year beginning in 2019 by the owner of a vacant site that stands entered on the register on 1 January of that year to the planning authority in whose functional area the vacant site is located.

(4) Vacant site levy shall be payable on a demand being made by a planning authority in that behalf and if it is not paid within 2 months after the day on

which it becomes payable it shall be recoverable as a simple contract debt in any court of competent jurisdiction.

- 8.6.4. In my mind, section 15 of the 2015 Act asks the planning authority to demand and charge a levy for each year and that if uncollected shall be recovered using the courts. It is not the Acts intention to allow the accumulation of levy amounts and combine in future demand notices. This is further clarified by the phrase ‘in respect of that year’ articulated in section 18 of the 2015 Act that allows the Board to cancel the entry of the site on the register and cancel the demand and, if necessary, correct the amount and it is this course of action that I recommend.
- 8.6.5. The Demand Notice issued under section 15 of the 2015 Act incorrectly states the levy due and should be amended to reflect the charge for the levy year 2020 of €8,750.

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 cancel the Notice of Demand for Payment of Vacant Site Levy as the site was no longer a vacant site on the 22 December 2020, the date on which the appeal was made. The demand for payment of the vacant site levy under Section 15 of the Urban Regeneration and Housing Act 2015 is, therefore, cancelled. In accordance with Section 18(4) of the Urban Regeneration and Housing Act 2015 (as amended), the Board should determine that the amount of the levy has been incorrectly calculated in respect of the vacant site and the correct amount should be €8,750.

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 site was not vacant or idle on the 22 December 2020, the date on which the appeal was made.

- (e) The amount of vacant site levy for 2020, indicated by the Notice of Demand has been incorrectly calculated, the amended demand made in respect of the year 2020 shall be revised to €8,750.

the Board is not satisfied that the site was a vacant site on the 22 December 2020, the date on which the appeal was made. The demand for payment of the vacant site levy under Section 15 of the Urban Regeneration and Housing Act 2015 is, therefore, cancelled.

Stephen Rhys Thomas
Senior Planning Inspector

8 October 2021