



An
Bord
Pleanála

Inspector's Report ABP-309143-21

Type of Appeal	Appeal against a Section 18 Demand for Payment
Location	Summerhill College, Circular Road, Sligo
Planning Authority	Sligo County Council
Planning Authority VSL Reg. Ref.	SL-VS-5
Site Owner	Eastview Investments Limited.
Planning Authority Decision	Charge Levy
Date of Site Visit	24 September 2021.
Inspector	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 Sligo County Council, stating their demand for a vacant site levy for the year 2019 amounting to €35,000 for vacant site lands at Circular Road, Sligo and identified as SL-VS-5. The notice was issued to Eastview Investments Ltd and dated 22 December 2020. The appellant Eastview Investments Ltd 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 was issued by Sligo County Council on the 4 September 2019. The value of the subject site is stated to be €500,000.
- 1.3. A Notice of Proposed Entry on the Vacant Sites Register was issued to Eastview Investments Ltd on the 16 November 2019. On the 19 December 2018, the Notice of Entry on the Vacant Sites Register was issued to Eastview Investments Ltd. This section 7(3) notice was not appealed to the Board.

2.0 Site Location and Description

- 2.1. The site is located at the former Summerhill College at Circular Road, east of the N4 (Ray Mcsharry Road) at the southern portion of Sligo town. The site is large and contains a former school and associated buildings. The main school building is between four and five (attic level) storeys and is a significant and imposing institutional structure in the area. It is listed on the Record of Protected Structures in the Sligo and Environs Development Plan. The main building is faced with stone and has a number of architectural highlights, including statuary, a bell tower, slate roof and prominent chimneys. The buildings are however, in disrepair with some broken panes of glass and significant recent fire damage to a portion of the roof of the main building. The building interior is also in poor condition but retains many original features and appears structurally sound.
- 2.2. The former school grounds that comprise the site are a mixture of hard standing and grass. The grass is overgrown, and vegetation is starting to colonise the hard standing areas. The boundaries of the site comprise stout stone walls in good repair and a palisade fence that bisects the former playing fields, this eastern portion of the

former school lands does not come within the scope of the subject site. Graffiti is present on the boundary facing the Ray Mcsharry 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) and 5(2) of the Act. A section 7(3) Notice was issued 3 December 2019 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.

4.0 Development Plan Policy

4.1. Sligo and Environs Development Plan 2010-2016 (SEDP)

The Sligo and Environs Development Plan 2010-2016 (SEDP) was adopted in November 2009 and was due to expire in 2015. When Sligo Borough Council was abolished in 2014, the lifetime of the SEDP was automatically extended in accordance with the provisions of section 11A of the Planning and Development Act 2000 (as amended). In August 2017, the provisions of the SEDP were further extended through incorporation into the Sligo County Development Plan 2017-2023 (CDP). The CDP states that the policies and objectives of the SEDP will continue to apply until the adoption of a Local Area Plan for Sligo and Environs.

The County Development Plan or Sligo Environs LAP are yet to be drafted.

The site is zoned **C2 - commercial and mixed land uses** Objective: Promote the development of a mix of uses centred on retail, office space, high-density housing, high-amenity open space and compatible uses.

The site contains a protected structure, RPS-29 - Summerhill College School Buildings:

- Attached multi-bay 3/4 storey stone school building built c.1890.
- Attached fourteen-bay two-storey stone school building built c. 1910.
- Attached four-bay two storey stone school hall built c. 1910.

4.2. **Sligo County Development Plan 2017-2023**

Section 3.7.4 Vacant site levy

The Urban Regeneration and Housing Act 2015 introduced the vacant site levy as a site activation measure, to ensure that vacant or underutilised land in urban areas is brought into beneficial use, while also ensuring a more efficient return on State investment in enabling infrastructure and helping to counter unsustainable urban sprawl.

The vacant site levy can be imposed by planning authorities under certain conditions in designated areas, i.e. where sites remain vacant and site owners/ developers fail to bring forward reasonable proposals, without good reason, for the development/reuse of such property in line with the provisions of the relevant local area or development plan.

For the purpose of the application of the vacant site levy, a site means “any area of land exceeding 0.05 hectares identified by a planning authority in its functional area but does not include any structure that is a person’s home.”

The levy shall be applied annually by a local authority at a rate of 3% of the market valuation of the vacant sites, exceeding 0.05 hectares in area, with reduced and zero rates applying in certain circumstances (0.05 hectares roughly equates to one-eighth of an acre or 500m²). The market valuation shall be determined by the local authority by authorising a suitably qualified person to estimate the price which the unencumbered fee simple of the site would fetch if sold on the open market. The levy shall be payable by the registered owner(s) of the site. Sligo County Council will

implement the vacant site levy as provided for in the Urban Regeneration and Housing Act 2015 and in accordance with the requirements set out in the Department's Circular Letter PL 7/2016.

It is an objective of Sligo County Council to: **Objective O-REG-1** Identify areas in need of regeneration in Sligo City and, if appropriate, in the Key Support Towns of Ballymote, Enniscrone and Tobercurry, as part of the process of review or preparation of the respective local area plans.

5.0 Planning History

5.1. Subject site

None relevant.

6.0 Planning Authority Decision

6.1. Planning Authority Reports

6.1.1. Planning Reports

- Report Date – 8 November 2018 – site visit conducted on the 5 November 2018, site remains as per previous surveys, the site is not considered to be regeneration lands for the purposes of the 2015 Act, the site is considered to be residential land, it is zoned C2-Commercial and Mixed Use and includes an objective for high density housing, there is a need for housing, nothing effects the site to prevent the provision of housing and the site has been vacant for the preceding 12 months. Recommendation to serve section 7(1) notice.
- Report Date – 18 December 2018 – no submissions received, recommendation to enter the site on the register.
- Report Date – 27 October 2020 – the site has been vacant during the period 1 January 2019 to 31 December 2019, there has been no change of ownership the levy can be charged for the year 2019.

6.2. Planning Authority Notice

- 6.2.1. Sligo County Council advised the site owner that the subject site (Planning Authority site ref. SL-VS-5) is now liable for a payment of the levy for 2019 of €35,000. Payment terms and methods are outlined.
- 6.2.2. A Notice of Determination of Market Value was issued to Eastview Investments Limited on the 4 September 2019 stating that the valuation placed on the site is €500,000 and instructions to make an appeal to the Valuations Tribunal.
- 6.2.3. A section 7(3) Notice issued on the 19 December 2018, advising the owner that their site had been placed on the register.
- 6.2.4. A section 7(1) Notice issued on the 16 November 2018, advising the owner that their site had been identified as a vacant site and invited submissions, accompanied by a site map.

7.0 The Appeal

7.1. Grounds of Appeal

- 7.1.1. The landowner has submitted an appeal to the Board, against the decision of Sligo 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 building is a protected structure and a number of conservation issues have been tackled, such as sash window repair after consultations with the Council.
 - There have been delays in lodging a planning application because of ongoing rights of way issues with a third party.
 - The property was in the process of sale (contracts attached), but the purchaser has failed to complete, and this further delayed any advances in a planning application.
 - The site remains the subject of legal proceedings, however, the owner continues to maintain the site and the site does not impact the area in terms of appearance.

The grounds of appeal are accompanied by photographs, a legal contract of property sale, High Court summons and correspondence from the planning authority regarding a query about change of ownership and levy charge.

7.2. Planning Authority Response

- 7.2.1. The planning authority have provided a brief response to the appellant's grounds of appeal and state that no new information has arisen and the planning authority's previous recommendation to charge the levy stands.

8.0 Assessment

8.1. Introduction

- 8.2. 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.

8.3. The site is no longer vacant

- 8.3.1. 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) or (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 2020.

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

8.4. Is it a Vacant Site?

- 8.4.1. A Section 7(3) Notice of Entry on the Vacant Sites Register was issued on the 19 December 2018. A Section 9 appeal was not made to the Board and no submission to the planning authority was made by the owner after the section 7(1) notice was

issued. For clarity, the site was placed on the register based upon the criteria for a residential site, section 5(1)(a) and section 6(4) and (5) of the 2015 Act refer. The planning authority underline this fact in their report of November 2018, before the section 7(1) notice was issued. The grounds of appeal raised by the owner refer to the condition of the building and how it is not a public eyesore or blot on the landscape. In this instance the condition or appearance of the building or site is not a consideration for whether the site should have been placed on to the register in the first place, as the lands are residential for the purposes of the VSR. Residential lands are subject to the following criteria:

- 8.4.2. Housing Need – section 5(1)(a)(i) of the 2015 Act asks whether the site is situated in an area in which there is a need for housing, and this is further refined by section 6(4) of the 2015 Act that states:

A planning authority, or the Board on appeal, shall determine whether or not there was a need for housing in an area within the planning authority's functional area for the purposes of this Part by reference to—

(a) the housing strategy and the core strategy of the planning authority,

(b) house prices and the cost of renting houses in the area,

(c) the number of households qualified for social housing support in accordance with section 20 of the Housing (Miscellaneous Provisions) Act 2009 that have specified the area as an area of choice for the receipt of such support and any changes to that number since the adoption of the planning authority's development plan, and

(d) whether the number of habitable houses available for purchase or rent was less than 5 per cent of the total number of houses in the area

- 8.4.3. The planning authority have included all of this information in a report entitled an assessment of housing need for the purposes of section 5(1)(a)(i) of the 2015 Act. This report is not available on the subject file or available to view on the Council website, but the Board would be aware of such a report from recent Demand Levy appeals in the Sligo town area. I find that the report is robust and satisfactorily identifies that there is indeed a housing need for Sligo and environs. In the planning authority's report under section 2.7 *Housing Availability*, I note that the PA have

referenced the number of habitable houses available for purchase or rent in terms of being less than 5 per cent of the total number of houses in the area. This amongst other things, demonstrates a need for housing because there is a shortage of supply. There is a housing need for Sligo, section 5(1)(a)(i) of the 2015 Act is therefore satisfied.

- 8.4.4. Statutory Plans and Vacant Site Levy Objectives – The Sligo County Development Plan sets out how it will implement the vacant site levy, Section 3.7.4 Vacant site levy refers. The site is zoned C2 - commercial and mixed land uses Objective: Promote the development of a mix of uses centred on retail, office space, high-density housing, high-amenity open space and compatible uses and as residential uses are targeted for this area, can be considered for the application of the levy as long as the lands exceed 0.05 hectares and do not include a person's home. This is such a case for the subject site. I am satisfied that the site was correctly considered for inclusion on the register as it meets the definition of 'residential lands' as set out in section 3 Definitions (Part 2) of the 2015 Act as follows:

land included by a planning authority in its development plan or local area plan in accordance with section 10(2)(a) of the Act of 2000 with the objective of zoning for use solely or primarily for residential purposes, and includes any structures on such land;

- 8.4.5. Land zoned for commercial and mixed land uses purposes that includes a high density residential component in equal measure to other uses can be included as residential lands for the purposes of the 2015 Act.
- 8.4.6. Site not suitable for housing – neither the owner nor the planning authority highlights any such thing that would render the site unsuitable for housing. The owner does make the point that conservation issues are important for the site and have caused delays in bringing the site forward for development. However, the presence of a protected structure on the site does not preclude the development of either the buildings themselves or the environs for residential development. This is a common occurrence for many sites with large institutional structures that require careful integration in any development proposal. I am satisfied that the site is suitable for housing, there is no obvious thing affecting the physical condition of the land comprising the site which might affect the provision of housing. I am satisfied that the

site was correctly entered onto the register as a vacant site under the criteria for residential lands.

- 8.4.7. The owner has not directly challenged the decision to place the site on the register in the first place. Instead, the focus is on the demand for payment of the levy charge for 2019. The owner has put forward legal issues around the sale of the site to protect the site from the levy charge and I focus on this in the following sections of my report.

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

- 8.4.8. The owner has made much about the legal circumstances that surround the lands, and this effectively paused efforts to develop the site. According to the owner, issues around the sale of the site and alleged contractual failures have effectively held up the sale, matters that are currently being pursued in the courts. In addition, the owner maintains that ongoing conservation works have occurred on site, with particular reference to timber sash windows, their retention and repair. On the day of my site visit I observed that the site was moderately maintained and secure. From a distance the site appears in a good state, but upon closer investigation, there are some broken panes of glass, the building interior is in a poor state and recent fire damage is present on a prominent roof line. However, as I have already pointed out, the site was placed on the register as residential lands and so therefore the appearance of the site is not a consideration defined by either section 6(4) or 6(5) of the 2015 Act.

- 8.4.9. The site has stood vacant for some time, the owner has not advanced a use having taken place on the site since they took ownership, and this is clear from its present condition. The owner had hoped to develop the site but has run-up against legal obstacles that have proven difficult to overcome from a time perspective. As a result, the site lies vacant, awaiting a use and more likely complete redevelopment. The task of obtaining planning permission for a site can be a lengthy process depending upon a variety of factors. I note the owner's pre-planning meetings with the Council's Conservation Officer. However, legal, planning and design processes are not matters that I would consider as an actual use that would lift the site from the register. In this regard I reference circular PL7/2016, Appendix 3, that states: "where a vacant site has an extant planning permission associated with it, this should not be

a consideration in determining whether to apply the levy. If such a site meets the criteria for a vacant site in respect of either residential or regeneration land, then the levy may be applied". In the case of the subject site, there is no planning permission in place and attempts to prepare a viable planning proposal have not yet begun. Unfortunately, I do not accept that seemingly intractable legal difficulties are enough of a reason to lift the site from the register and avoid the charge.

8.5. Procedural Matter

- 8.5.1. I note that the VSR accessible on the Council's website, does not list the subject site (SL-VS-5) as a Vacant Site. The VSR was updated 23 July 2020, according to the Council's website. I mention this only as an item of interest, the fact that the site is not listed on the VSR may simply be an administrative error and does not have an impact on my assessment as it is laid out above.

8.6. Levy Calculation

- 8.6.1. A Notice of Determination of Market Value was issued to Eastview Investments Limited on the 4 September 2019 stating that the valuation placed on the site is €500,000. 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 Eastview Investments Limited on the 22 December 2020 for the value of €35,000.
- 8.6.3. 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.

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 7 January 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.

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.

Stephen Rhys Thomas
Senior Planning Inspector

8 October 2021