



An
Bord
Pleanála

Inspector's Report ABP-309261-21

Type of Appeal	Appeal against a Section 18 Demand for Payment.
Location	Cairns Road, Sligo.
Planning Authority	Sligo County Council
Planning Authority VSL Reg. Ref.	SL-VS-13
Site Owner	Eminence Homes Ltd.
Planning Authority Decision	Charge Levy
Date of Site Visit	24 September 2021.
Inspector	Stephen Rhys Thomas

Contents

1.0 Introduction	3
2.0 Site Location and Description	3
3.0 Statutory Context	3
4.0 Development Plan Policy	4
5.0 Planning History	5
6.0 Planning Authority Decision	6
6.1. Planning Authority Reports	6
6.2. Planning Authority Notice	6
7.0 The Appeal	6
8.0 Assessment	8
9.0 Recommendation	13
10.0 Reasons and Considerations	14

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 €80,500 for vacant site lands at Cairns Road, Sligo and identified as SL-VS-13. The notice was issued to Eminence Homes Ltd and dated 16 December 2020. The owner Eminence Homes 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 1 August 2019. The value of the subject site is stated to be €1,150,000.
- 1.3. On the 25 October 2018, the Notice of Entry on the Vacant Sites Register was issued to Elizabeth O'Toole, Mary Cawley, Jarlath Mullen, Edmund Mullen, Phyllis Kelly and Peter Mullen. This section 7(3) notice was not appealed to the Board.

2.0 Site Location and Description

- 2.1. The site is located within a southern suburb of Sligo Town, south west of Markievicz Park GAA grounds. The eastern part of the site bounds Cairn's Road, the remaining boundaries border The Elms, The Laurels, Rathanna and Newgrove housing estates. The site is level and overgrown with grass, there are no buildings or structures. The boundaries of the site comprise mostly mature hedging and an open earthen bank to open space at The Elms to the south. The site is bisected by a mature hedge line that runs north to south. The site has two agricultural entrances along Cairn's 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 **R2 - low/medium-density residential areas** Objective: Promote the development of housing within a gross density range varying between 20 and 34 dwellings per hectare (8 to 13 dwellings per acre). In R2 zones, blanket construction of three- and four-bedroom houses will be discouraged. All new residential development will have to recognise and reflect the changing demographic structure in the house type and design, site layout and the additional facilities proposed. While housing is the primary use in these zones, recreational structures, crèches/playschools, educational facilities, community buildings, sheltered housing and corner shops will also be considered.

4.2. Sligo County Development Plan 2017-2023 as varied October 2020.

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 7% 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 relevant Circular Letters issued by the Department.

It is an objective of Sligo County Council: **Objective O-REG-1** to 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.

6.0 Planning Authority Decision

6.1. Planning Authority Reports

6.1.1. Planning Reports

- Report Date 24 July 2019 – since placement on the register, the site has been valued, ownership details have been updated, pre-planning discussions continue, the owners are still Eminence Homes Ltd.
- 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.

The documentation is accompanied by a report that outlines housing need for Sligo town and environs.

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-13) is now liable for a payment of the levy for 2019 of €80,500. Payment terms and methods are outlined.
- 6.2.2. A Notice of Determination of Market Value was issued to Eminence Homes Ltd on the 1 August 2019 stating that the valuation placed on the site is €1,150,000 and instructions to make an appeal to the Valuations Tribunal.
- 6.2.3. A section 7(3) Notice issued on the 25 October 2018, advising the owners that their site had been placed on the register. Owners included: to Elizabeth O'Toole, Mary Cawley, Jarlath Mullen, Edmund Mullen, Phyllis Kelly and Peter Mullen.

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:

- Rhatigan Architects have been appointed to prepare and lodge a planning application, pre-planning meetings have taken place and Part V obligations discussed. A planning application will shortly be lodged with the planning authority.
- The site was acquired by Eminence Homes Ltd in December 2018, despite a lot of work prepared for a planning application, Covid-19 has disrupted efforts to progress things as much as liked. The planning authority knew that a planning application was imminent and were too hasty to charge the levy.
- The planning authority have not adequately demonstrated that there is a need for housing at this location. Though recent CSO figures are not available, Daft property data shows that out of 7,619 households (or so) only 64 were available for sale/rent, less than the 5% parameter in the 2015 Act, section 6(4)(d) refers.
- The planning authority have no clear objective in the Development Plan to identify residential lands for the purposes of the vacant site levy.
- There is insufficient public infrastructure available to enable housing to be constructed on the lands. Storm water drainage is deficient, and a new larger pipe is required.

The grounds of appeal are accompanied by a letter showing that Rhatigan Architects have been engaged to prepare a planning application to be lodged soon, a record of pre-planning discussions dated 15 January 2019, email contacts between Rhatigan Architects and the planning authority dated 7 to 15 March 2019, letter dated 19 August 2019 from Housing Department Sligo County Council and a letter dated 20 January 2021 that states there is a severe shortage of houses for sale or rent.

7.2. Planning Authority Response

7.2.1. None.

7.3. Further Submission

7.3.1. The owner makes the statement that the lands are actually used by the adjacent GAA grounds as overflow car parking on match days. The use of the lands as a temporary car park are covered under Class 37 Part 1 Schedule 2 of the Planning and Development Regulations 2001 (as amended) and essential to control traffic and

parking. While the site is not in use for the provision of housing it is in use for overspill car parking and this is vital to the GAA.

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 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 of Entry on the Vacant Sites Register was issued on the 25 October 2018. A Section 9 appeal was not made to the Board. The owner states that they did not respond to any Notices with regard to the Vacant site Levy because as new owners since December 2018 and actively pursuing permission, they believed the planning authority would not demand the levy. The owner points out that they were made aware that the site had been placed on the register. However, the owner questions the need for housing, the lack of a specific objective in the statutory plan with regard to residential land and the application of the levy and finally, that the site has insufficient infrastructure to enable housing. I consider that the owner challenges whether the site should have been placed on the register in the first place.

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. 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 demonstrates a need for housing because there is a shortage of supply. I also note that within the appeal documentation submitted by the owner, a correspondence from David Reynolds MIPAV states a lack of supply of apartments and houses in Sligo Town. It is clear from the documentation on file that the planning authority prepared a report that demonstrates a housing need for Sligo and that as of January 2021 there was a shortage of supply of houses and apartments. Section 5(1)(a)(i) of the 2015 Act is therefore satisfied.

8.4.4. Statutory Plans and Vacant Site Levy Objectives – the owner questions whether the planning authority have correctly identified sites for the vacant site levy and detailed objectives for same. 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 R2 - low/medium-density residential areas and so 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. It is therefore clear that land zoned for residential purposes can be included as residential lands for the purposes of the 2015 Act. The subject lands are zoned R2 – low/medium-density residential areas, and so are easily identified as locations where the levy can be applied.
- 8.4.6. Site not suitable for housing – the owner makes the point that because of a deficiency in the storm water drainage network serving the lands, a new larger pipe would be required. This deficiency in public infrastructure as defined by section 6(5)(b) of the 205 Act means that the site is not suitable for the provision of housing, the owner argues. The point is made by the owner that during pre-planning discussions with the planning authority the deficiency in the storm water network in the area was highlighted. But this is not a factor that would limit the provision of housing or block it entirely. The planning authority have not provided a response to this issue. However, it is sometimes the case that as development proposals progress to design stage limitations and solutions are found. In this case it appears that local drainage infrastructure is operating at 90% capacity, the storm sewer could need to be upsized to accommodate the development. This is not unusual and in most cases a solution is agreed and works carried out funded by the County Development Contribution Scheme or other agreement to encompass works necessary to accommodate development on zoned land. In my view there is already infrastructure in the vicinity to accommodate development, whether upgrades are necessary or not is a matter for a planning application and the planning authority to determine. On a final note, until a planning application is lodged, it cannot be

determined with certainty that such a deficiency renders the site unviable for housing. In this regard, the Board would be aware of a recent decision to cancel a demand for levy payment because a site was hampered by a lack of public infrastructure and facilities, ABP-307450-20 refers.

- 8.4.7. Lastly, the site was entered on the register under different ownership, no submissions were made and no appeal lodged during that process. The lands changed hands in 2018 and it is apparent that the new owner was aware that the site had been placed on the register and that a levy charge could be demanded by the planning authority. The owner has challenged the decision to place the site on the register in the first place and relied on the work that is ongoing to prepare a planning application to avoid payment of the levy for 2019. However, as I have demonstrated above, I am satisfied that the site was entered onto to the register correctly. For the purposes of the 2015 Act, the site was a vacant site and has been correctly entered on the register, the planning authority are positioned to demand the levy

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

- 8.4.8. The appellant has detailed the events that occurred since they took ownership of the site in question. The owner states that work to prepare a planning application has progressed despite Covid-19 restrictions and lengthy pre-planning consultations. Frustration is expressed by the owner at the planning authority, who knew that a planning application was imminent and that they were surprised to be charged the levy.
- 8.4.9. The task of obtaining planning permission for a site can be a lengthy process depending upon a variety of factors. However, the planning and design process 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 it is the task of preparing an application that has been put forward by the owner to avoid the levy charge. Unfortunately, I do not accept that the

administrative task of preparing a planning application is enough to lift the site from the register and avoid the charge.

- 8.4.10. Car Parking Use - The owner goes on to state in a further submission to the Board, dated 20 January 2021, that the lands have in fact been used as overflow car parking for the local GAA grounds on matchdays. The appellant states that this type of development is covered under Class 37 Part 1 Schedule 2 of the Planning and Development Regulations 2001 (as amended) and is essential to control traffic and parking in the area. Some forms of development can happen on lands and these are known as exempted development, Class 37 is defined as follows:

Development consisting of the use of land for any fair, funfair, bazaar or circus or any local event of a religious, cultural, educational, political, social, recreational or sporting character and the placing or maintenance of tents, vans or other temporary or movable structures or objects on the land in connection with such use.

- 8.4.11. This form of development is restricted by certain conditions and limitations as follows:

1. The land shall not be used for any such purposes either continuously for a period exceeding 15 days or occasionally for periods exceeding in aggregate 30 days in any year.

2. On the discontinuance of such use the land shall be reinstated save to such extent as may be authorised or required by a permission under the Act.

- 8.4.12. Class 37 does not explicitly mention car parking but rather the temporary activity itself and other temporary or movable structures or objects used in connection with such an activity. I also note that there is no information on file to suggest that such a use is an unauthorised use and so should be disregarded. Instead, I reference Circular letter PL 7/ 2016, that provides clarity in relation to the Vacant Site Levy. In this instance and when identifying vacant sites it is acknowledged that in certain circumstances a site that is vacant may be used on a temporary short term or periodic ad hoc basis. For example, a site may be used to host a monthly event such as a farmers market etc. A site that is vacant and used for such temporary purposes would not be considered as being in full and active use. Therefore, the levy can be applied. From this I conclude that even though the lands may be used from time to

time as an overspill car parking facility for the local GAA grounds, such a use cannot be considered to be a full time and active use for the site in question. As no actual use for the site occurred during 2019 or at the time that the appeal was made, I am satisfied that the site should remain on the register and the charge for 2019 should stand.

Change of Ownership

- 8.4.13. According to the owner, the lands changed ownership in December 2018. The 2015 Act makes an allowance for either death or change of ownership and section 17(1) details whether a levy charge would be zero or not, as follows:

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.

- 8.4.14. In this instance, a change of ownership occurred in the year before the levy charge currently demanded by the planning authority, 2019. I am satisfied that the levy can be charged for 2019 and though a change of ownership occurred in 2018, this would not result in a zero charge for the year concerned, 2019.

8.5. Levy Calculation

- 8.5.1. A Notice of Determination of Market Value was issued to Eminence Homes Ltd on the 1 August 2019 stating that the valuation placed on the site is €1,150,000. No evidence from the appellant has been submitted to show that this valuation was appealed to the Valuation Tribunal.
- 8.5.2. A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to Eminence Homes Ltd on the 16 December 2020 for the value of €80,500.
- 8.5.3. 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.

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 21 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 use of the site as a temporary car park cannot be considered as being in full and active use, there is no other 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

29 September 2021