



An
Bord
Pleanála

Inspector's Report ABP-309289-21

Type of Appeal

1. Appeal against a Section 18
Demand for Payment

Location

Newtownholmes Road, Caltragh,
Sligo.

Planning Authority

Sligo County Council

Planning Authority VSL Reg. Ref.

SL/VS/1

Site Owner

Noel McTernan

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 €42,000 for vacant site lands at Newtownholmes Road, Caltragh Road, Sligo and identified as SL-VS-1. The notice was issued to Noel McTernan and dated 16 December 2020. The owner Noel McTernan 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 3 September 2019. The value of the subject site is stated to be €600,000.
- 1.3. A Notice of Proposed Entry on the Vacant Sites Register was issued to Noel McTernan on the 30 January 2018. On the 25 October 2018, the Notice of Entry on the Vacant Sites Register was issued to Noel McTernan. This section 7(3) notice was not appealed to the Board.

2.0 Site Location and Description

- 2.1. The site is located in the southern suburbs of Sligo Town, adjacent to the Caltragh Road that accesses Sligo from the N4. The site is accessed from Newtownholmes Road via an agricultural entrance, this is the only frontage to a public road. The site is triangular in shape and tapers to a point at the northern edge. The site is not level and slopes downwards noticeably from south to north to the Caltragh roundabout. The site comprises two fields, in grass but much overgrown, with no evident signs of agriculture having been carried out in the recent past.

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) and 5(2) of the Act. A section 7(3) Notice was issued 25 October 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.

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 13 March 2018– submission received (outside the closing date) on foot of a section 7(1) notice, though a planning application may be imminent, the site is vacant, place on the register.
- Report Date – 27 October 2020 – site surveys were carried out 19 September 2019 and 20 February 2020. A planning application was lodged for the site and adjacent site but deemed withdrawn. 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-1) is now liable for a payment of the levy for 2019 of €42,000. Payment terms and methods are outlined.
- 6.2.2. A Notice of Determination of Market Value was issued to Noel McTernan on the 3 September 2019 stating that the valuation placed on the site is €600,000 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 owner that their site had been placed on the register.
- 6.2.4. A section 7(1) Notice issued on the 30 January 2018, advising the owner that their site had been identified as a vacant site and invited submissions.

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:

- Arrangements were made to combine this site with another and obtain planning permission. Plans fell through because of objections concerning the likelihood of archaeological remains on the site. Archaeological findings were located on the adjacent site, the plans were thus unviable and the application was withdrawn.
- After the delays caused by archaeological remains on the adjacent site and Covid-19 restrictions, plans are now being drawn up by Ronan Tansey (Architect) to progress a planning application on the owner's site. All these efforts are considered to be an active use for the site by the owner.

The grounds of appeal are set out in two letters dated 8 and 19 January 2021, the contents are identical.

7.2. Planning Authority Response

None.

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 25 October 2018. A Section 9 appeal was not made to the Board. However, the owner did make a submission in relation to the section 7(1) notice. Despite the submission being received by the planning authority out of time, the planning authority still had regard to its contents but placed the site on the register. I am satisfied that there was enough engagement with the VSR process by the owner, and they elected not to appeal in the first instance.

8.4.2. The site was initially placed on the register in October 2018 and the majority of the site was considered vacant for the period of twelve months prior to that date. The assessments provided by the planning authority provide the basis for the decision to place the site on the register and I find them to comply with the requirements of the 2015 Act in relation to residential land. The owner elected not to appeal this decision of the planning authority; however, they did engage with the process and made a submission after the initial section 7(1) notice. The owner's submission referred to a failed property transaction, ongoing pre-planning discussions and the task of engaging with an adjacent property owner to advance a planning application.

8.4.3. I am satisfied that the owner was sufficiently engaged with the process at the time to make a reasoned decision not to appeal. I am satisfied that the site was correctly entered onto the register as a vacant site under the criteria of a residential site. 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 and all the reasons why the site should not be charged. Quite rightly the owner

has narrowed their view to the matter of whether the site was no longer vacant, 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

- 8.4.4. The owner has detailed that since they acquired the site in December 2015, they have advanced plans to develop the site. Early on in the process a plan to sell the site was considered but fell through. A planning application was eventually prepared and lodged for 44 units for the subject site and adjacent site. However, after extensive surveys and due to the presence of archaeological remains on the site adjacent, overall plans for the lands were considered to be unviable. It is the owner's hope to advance new plans for his site and work is progressing on that front.
- 8.4.5. The planning authority have demanded a charge for 2019, because in their view no development had occurred on the site, and it remained vacant during 2019. From my own observations of the site, I can see that it is unlikely that the lands have had any productive use for some time. The lands are overgrown with long grass and shrubs, there was no evidence of stock grazing or agriculture of any type.
- 8.4.6. The substantial matters that arise from the appeal grounds refer to the owner's efforts of getting the site ready for development, either to make it attractive for sale or to develop the lands themselves. This has involved a complicated process of engagement with a neighbouring landowner in order to develop the overall lands in a logical manner. Further complications arose during the process of obtaining planning permission involving the likelihood of archaeological remains on the site. Ultimately these plans fell apart and now the owner wants to start afresh and advance a development proposal for his site alone. The owner outlines this lengthy process and resents having to involve the neighbouring landowner in order to secure permission, a strategy apparently at the insistence of the planning authority. All of this work with regards to the site has taken time and expense and it is this type of work that the owner claims should protect the site from the levy.
- 8.4.7. The task of obtaining planning permission for a site can be a lengthy process depending upon a variety of factors, and in this case it would appear that all along the lands stayed vacant. No actual and physical use for the site has been advanced by the owner or observed by the planning authority during the relevant period, 2019. The design process, negotiations of sale and further survey work 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 only 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 survey and preparing a planning application is enough to lift the site from the register and avoid the charge. 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.

8.5. Levy Calculation

- 8.5.1. A Notice of Determination of Market Value was issued to Noel McTernan on the 3 September 2019 stating that the valuation placed on the site is €600,000. 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 Noel McTernan on the 16 December 2020 for the value of €42,000.
- 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 20 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

29 September 2021