



An
Bord
Pleanála

Inspector's Report ABP-310273-21

Type of Appeal	Appeal against a Section 18 Demand for Payment.
Location	Friars Inch, Bleach Road, Co. Kilkenny.
Planning Authority	Kilkenny County Council
Planning Authority VSL Reg. Ref.	VSR19-12
Site Owner	Roger Beeken.
Planning Authority Decision	Charge Levy.
Date of Site Visit	01 July 2022.
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 Kilkenny County Council, stating their demand for a vacant site levy for the year 2019 and 2020 amounting to €105,000 (2019 - €52,500 and 2020 €52,500) for vacant site lands at Friars Inch, Bleach Road, Co. Kilkenny, and identified as VSR 19-12. The notice was issued to Roger Beeken and dated 10 May 2021. The owner Roger Beeken 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 Kilkenny County Council on the 13 March 2019. The value of the subject site is stated to be €750,000.
- 1.3. A Notice of Proposed Entry on the Vacant Sites Register was issued to Roger Beeken on the 20 November 2018. On the 31 December 2018, the Notice of Entry on the Vacant Sites Register was issued to Roger Beeken. This section 7(3) notice was not appealed to the Board.

2.0 Site Location and Description

- 2.1. The site is located at Friars Inch along Bleach Road, east of the River Nore in Kilkenny City. Bleach Road extends northwards from a junction with Green's Hill Road and links housing estates to the north of Kilkenny with the city centre to the south. Bleach Road at this location is a very narrow country laneway with mature and verdant hedgerows and low stone walls, there are no footpaths. The subject site is on the western side of the lane and falls very steeply to the river Nore. The site is heavily overgrown with mature trees and was quite inaccessible during my observations. The road frontage comprises a low wall backed by a mature hedgerow and trees.

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 the 2015 Act. A section 7(3) Notice was issued 30

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.

4.0 Development Plan Policy

4.1. **The Kilkenny City and Environs Development Plan 2014-2020** is the operative development plan for the subject appeal. The site is located on lands that are subject to zoning Existing Residential – ‘Objective: To protect, provide and improve residential amenities.’.

Variation 4 of the development plan (October 2017) is to reflect the vacant site levy provisions. Objective 3A To promote the redevelopment and renewal of areas identified having regard to the core strategy, that are in need of regeneration, in order to prevent—

(i) adverse effects on existing amenities in such areas, in particular as a result of the ruinous or neglected condition of any land,

(ii) urban blight and decay,

(iii) anti-social behaviour, or

(iv) a shortage of habitable houses or of land suitable for residential use or a mixture of residential and other uses.

The levy may be applied to all identified ‘Regeneration’ land and ‘Residential’ land in existing land use zonings. In particular, the areas covered by the following zoning objectives are considered to constitute regeneration land:

- General Business

- Mixed Use
- Business Park

Other regeneration zonings may also be identified in any relevant Local Area Plans.

4.2. **Kilkenny City and County Development Plan 2021-2027**, was made on the 3 September 2021 and came into effect on the 15 October 2021.

6.6 Vacant Site Levy

A vacant site levy was established under the Urban Regeneration & Housing Act 2015. This levy is a site activation measure, to ensure that vacant land in urban areas is brought into beneficial use. At the passing of this Act, the Minister stated the levy is a "visible demonstration of the Government's commitment to tackle reasons why so many key sites that are suitable for development are not coming forward at a time of such a major need for housing".

The Urban Regeneration and Housing Act set out two broad categories of vacant land that the levy may apply to:

- i) Lands zoned primarily for residential purposes
- ii) Lands in need of regeneration

The Levy is an integral part of the development planning process to incentivise the development of vacant or idle sites identified by planning authorities as "regeneration land" or "residential land", with a view to bringing such sites into beneficial use. It can be imposed by planning authorities under certain conditions in designated areas 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.

The Council will examine lands within the City and County, as appropriate as part of its active land management strategy for the purposes as set out in the Urban Regeneration and Housing Act 2015, in relation to the Vacant Site Levy. The Vacant Sites Register is reviewed on an annual basis (See Section 4.2.1 also).

Objective 6D - To identify vacant sites where appropriate zoning applies and maintain a Vacant Sites Register in the plan area for the purpose of the Vacant Site Levy.

Objective 4C - To actively promote the redevelopment and renewal of areas in need of regeneration whether urban or rural through appropriate active land management measures during the period of the Plan.

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The site is zoned Existing Residential on Figure CS4 Kilkenny City Zoning map.

6.5 Active Land Management

6.5.1 Vacant Sites - The Council engages in active land management in order to incentivise the development of vacant or idle sites identified as “regeneration land” or “residential land”, with a view to bringing such sites into beneficial use. This ensures the maximising the impact of public funds and expenditure on infrastructure.

Volume 1, Section 6.6 Vacant Site Levy sets out the position as a whole for the City and County.

Objective C6G - To identify vacant sites where appropriate zoning applies and maintain and update a Vacant Sites Register in the plan area for the purpose of the Vacant Site Levy.

5.0 Planning History

PA ref **19/654** – modification of 8 dwellings permitted under a previous permission (17/593).

6.0 Planning Authority Decision

6.1. Register of Vacant Sites Report:

First report (19/11/2018) – Site visit conducted 19 November 2018. The site is greater than 0.05 Hectares, is zoned residential, there is a need for housing and site is suitable for housing. The report is accompanied by a photograph and map.

6.2. Planning Authority Notice

- 6.2.1. Kilkenny County Council advised the site owner that the subject site (Planning Authority site ref. VSR 19-12) is now liable for a payment of the levy for 2019 and 2020 of €105,000.00 Payment terms and methods are outlined.

- 6.2.2. A Notice of Determination of Market Value was issued to Roger Beeken on the 13 May 2019 stating that the valuation placed on the site is €750,000 and instructions to make an appeal to the Valuations Tribunal.
- 6.2.3. A section 7(3) Notice issued on the 31 December 2018, advising the owner that their site had been placed on the register, accompanied by a site map. The Notice was sent to Roger Beeken.
- 6.2.4. A section 7(1) Notice issued on the 20 November 2018, advising the owner that their site had been identified as a vacant site and invited submissions, also accompanied by a site map. The notice references section 7(1) 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 Kilkenny County Council to enter the subject site on the Register. The grounds of the appeal can be summarised as follows:
- Permission was granted on the site for 8 residential units (19654 refers), a modification of a previous grant of permission in 2017. Detailed engineering design and Irish Water connections subsequently submitted.
 - Covid restrictions have prevented house construction in 2020 and 2021, even though the site was ready to start construction.

The appeal is accompanied by the grant of permission, the notice, IW confirmation and an Ormond construction correspondence.

7.2. Planning Authority Response

- A complete chronology of development plan and planning history is listed out for the site, there have been 15 applications on the site, with a permission for residential development since 2008.

7.3. Further Response

- 7.3.1. The appellant has submitted a response to the planning authority's submission, as follows:

- The sequence of events listed out by the planning authority is noted, however, it fails to appreciate the housing market crash and recent pandemic restrictions. There were a number of factors that complicated the proposed development, road widening, footpaths and structural retaining works that have added cost to the project (breakdown of costs illustrated by Nolan Construction).

8.0 **Assessment**

8.1. **Introduction**

8.1.1. This current 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.

8.2. **The site is no longer vacant**

8.2.1. 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 2019 and 2020.

8.3. **Is it a Vacant Site?**

8.3.1. A Section 7(3) Notice of Entry on the Vacant Sites Register was issued on the 31 December 2018. No Section 9 appeal was made to the Board. The appellant has not questioned the characteristics of the lands in terms of its qualification as a vacant site under the terms of the 2015 Act, but has advanced a number of technical and financial reasons why development has not taken place to date.

8.3.2. The site was initially placed on the register in December 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 did not appeal this decision of the planning authority; and I cannot be certain that they engaged fully with the process after the initial section 7(1) notice. However, given the owner's appeal and further observations that refer to a desire to develop the land based upon a planning permission and the advanced nature of costings and other consents. I am satisfied that it is not the principle of being placed on the register that is at stake but rather the demand for the levy in the face of Covid restrictions and rising construction costs that have militated against the commencement of works on the site.

- 8.3.3. The site was initially placed on the register in December 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. I am satisfied that the site was correctly entered onto the register as a vacant site under the criteria of a residential site and the planning authority used the proper mechanisms to do so.

The site is no longer vacant as of the 1st of January 2019 and 2020

- 8.3.4. The main and only grounds of appeal put forward by the appellant relate to the fact that Covid restrictions have limited the ability to begin works on site despite all other technical consents having been obtained. In response to the planning authority's views, the owner observes that financial constraints, both historic and current, have tested the viability of the site to deliver housing.
- 8.3.5. I have observed that the physical condition of the site has not altered since the site was placed on the register. I acknowledge that all of the administrative tasks to pave the way for development works have been completed by the owner and that events beyond their control have limited works on site. In relation to getting the site ready for development, such as planning approval, Irish Water consent for connection and construction quotations, these are all tasks that ready the site for development. They do not alter the use of the site, that has remained unchanged. The appellant states that Covid restrictions militated against construction activity during 2020 and that is

one of the reasons why the site has not been developed. That may be the case, but there were periods when restrictions were eased allowing construction activity to take place. I appreciate that financial reasons may have altered the viability of the scheme, but this is not a consideration allowed for in the 2015 Act. For the periods concerned, the site was idle and thus a vacant site.

- 8.3.6. The Board may wish to note that under section 10 of the 2015 Act, the obligation to notify the planning authority of any changes in the status of the site is on the owner, as follows:

(1) The owner of a vacant site that stands entered on the register under section 6 (2) shall notify the planning authority in whose functional area the site is located if it is no longer vacant or idle.

(2) If, at any time, a planning authority is satisfied that a site that stands entered on the register under section 6 (2) is no longer a vacant site it shall cancel the entry on the register in respect of that site.

Consequently, it is in the owner's power to provide suitable evidence to satisfy the planning authority that the site is no longer vacant or idle and cancel the entry of the site on the register, if works on site were to commence.

- 8.3.7. The appellant has not put forward any use for the site over the relevant period. My observations of the site would agree with the planning authority's conclusion that the site has been vacant for some time. I am satisfied that the site was vacant or idle for the years 2019 and 2020, the site should remain on the register and the levy charged for 2019 and 2020.

8.4. Procedural Matter

- 8.4.1. 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 10 May 2021. There is no record of an earlier section 15(4) Notice, that would deal with the payment of the levy for 2019 alone. The 2015 Act, in relation to section 15, states the following:

(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.

8.4.2. The 2015 Act specifically states that a levy shall be charged for each year but does not specifically state that a Demand for Payment should also be a yearly occurrence. My interpretation of the Act is that in terms of fair and logical procedure a Demand for Payment in terms of section 15 of the 2015 Act should really issue each year a charge is to be levied. This would make the administrative task of site removal from the register slightly easier, if that case should prevail. From the planning authority's notice, I deduce that a levy has been charged for 2019 and 2020 and the date of the Demand for Payment notice is May 2021. It is the demand for payment notice that has been appealed by the owner and so it follows that the levy charge for 2019 and 2020 is also the target of the appeal. I am satisfied that the appeal before the Board can deal with both charges (2019 and 2020) and if it is the case that the site is to be cancelled and removed from the register, a charge may still apply for the year concerned if matters altered the site's status in the interim. In other words. if the site were to be cancelled, a decision must be made as to when the change occurred and consequently what charge, 2019 or 2020, is to be cancelled. In this instance, the argument is purely hypothetical, given that the site has not altered so as to remove the site from the register, section 8.3 of my report refers.

8.5. Levy Calculation

8.5.1. I have already explained how in my opinion, the levy charged for 2019 and 2020 can be demanded by the planning authority, section 8.4 of my report refers. A Notice of Determination of Market Value was issued to Roger Beeken on the 13th May 2019 stating that the valuation placed on the site is €750,000. 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 Roger Beeken on the 10 May 2021 for the value of €105,000. The calculation is based upon a charge for 2019 at €52,500 and for 2020 at €52,500, amounting to a total of €105,000 for both levy years.
- 8.5.3. 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. The Demand Notice issued under section 15 of the 2015 Act correctly states the levy now due.
- 8.5.4. I have already explained that a single Demand for Payment can be issued for two separate years and that the appeal before the Board, if successful has the potential to cancel charges for both years, section 8.4 refers. In terms of the current calculation, the levy rate applicable is 7% for the year 2019 and 2020. The site was included in the register in 2019 and the demand notice was accompanied by an invoice that states that the vacant site levy is now payable for 2019 and 2020. However, the 2015 Act does not illustrate or define what should be contained in a Notice and so each planning authority is left to their own devices. In this instance, I am satisfied that the planning authority included all that was needed in their section 15 Notice and the accompanying correspondence to dispel any doubt for what year or years the charge is for or how it was calculated. The site should remain on the register and the charge confirmed.

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 1st of January 2019, the 1st of January 2020 and was a vacant site on the 19th May 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 1st of January 2019 or the 1st of 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.

Stephen Rhys Thomas
Senior Planning Inspector

20 July 2022