



An
Bord
Pleanála

Inspector's Report ABP-310376-21

Type of Appeal	Appeal against a Section 18 Demand for Payment.
Location	Maudlin Street, Thomastown, Co Kilkenny.
Planning Authority	Kilkenny County Council.
Planning Authority VSL Reg. Ref.	VSR19-18.
Site Owner	Elizabeth Dack.
Planning Authority Decision	Charge Levy.
Date of Site Visit	27 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 (€26,250) and 2020 (€26,250) amounting to €52,500 for vacant site lands at Maudlin Street, Thomastown, Co Kilkenny, and identified as VSR 19-18. The notice was issued to Elizabeth Dack and Anne Dack and dated 10 May 2021. Elizabeth Dack 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 May 2019. The value of the subject site is stated to be €375,000.
- 1.3. A Notice of Proposed Entry on the Vacant Sites Register was issued to Elizabeth Dack and Anne Dack on the 20 November 2018. On the 31 December 2018, the Notice of Entry on the Vacant Sites Register was issued to Elizabeth Dack and Anne Dack. This section 7(3) notice was not appealed to the Board.

2.0 Site Location and Description

- 2.1. The site is located north of the centre of Thomastown in County Kilkenny, on Maudlin Street. The site comprises a number of commercial and domestic buildings that all front onto Maudlin Street and form the western boundary of the site. The site interior is not visible from the road. The buildings within the site along Maudlin Street are not in very good condition and have the appearance of being vacant for some time. Signage on site indicates that the site has been agreed for sale. The site does not border Maudlin Court to the north, instead there is a wide margin attractively landscaped and well maintained. The remaining boundaries of the site are located to the rear gardens of adjacent residential property.

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) of the Act. A section 7(3) Notice

was issued 27 June 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. Thomastown Local Area Plan 2019

4.2. The Thomastown Local Area Plan 2019 is the operative development plan for the subject appeal. The site is located on lands subject to zoning objective – Existing Residential.

Section 6.5 Vacant site Levy

One of the key provisions of the Urban Regeneration and Housing Act 2015 is the Vacant Site Levy. The Act was designed to incentivise urban regeneration and promote increased housing supply.

Beginning on 1st January 2017, Planning Authorities are required to compile and maintain a register of vacant land in their functional areas and to apply a levy in respect of such sites. A targeted approach to this scheme was applied to date in County Kilkenny, which will focus on the identified growth centres of Kilkenny City, Ferrybank, Castlecomer, Callan and Thomastown.

The Thomastown LAP promotes, encourages and facilitates the appropriate development of sites identified as “regeneration land” and “residential land” in order to prevent adverse effects on existing amenities in such areas, in particular as a result of:

- the ruinous or neglected condition of any land

- Urban blight or decay
- Anti-social behaviour or a shortage of habitable houses or of land suitable for residential use or a mixture of residential and other uses.

For the purpose of the vacant sites levy the following zoning will be considered for the purpose of the act in accordance with the County Development Plan:

- Mixed use, industrial and community facilities for regeneration purposes.
- All residential zonings for residential purposes.

These zones will be examined to determine if there are sites where the Vacant Site Levy is applicable under the provisions of Urban Housing and Regeneration Act 2015 and all associated regulations and guidance.

VS1: Vacant Sites - It is the policy of the Council to apply the provisions of the Urban Regeneration and Housing Act 2015 in Thomastown.

Objectives - It is an objective of the Council:

VSO1.1: To identify vacant sites in the town for regeneration and housing and establish and maintain a register of vacant sites (entitled the vacant sites register) in the plan area for the purpose of the Vacant Site Levy (Urban Regeneration and Housing Act 2015).

VSO1.2: To promote the sustainable development of vacant residential and regeneration sites in Thomastown through the application of the Urban Regeneration and Housing Act 2015, Vacant Site Levy, on lands zoned 'Town Centre' and 'Mixed Use' for Regeneration, and 'New Residential', 'Low Density Residential' and 'Existing Residential' for housing.

The **Thomastown Local Area Plan 2009-2020** preceded the 2019 LAP and was extended on the 10 February 2014 until the 15 February 2020.

5.0 Planning History

None recent or relevant.

6.0 Planning Authority Decision

6.1. Register of Vacant Sites Report:

First report (19/04/2018)– Site inspection took place on the 16 October 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 aerial photography.

6.2. Planning Authority Notice

- 6.2.1. Kilkenny County Council advised the site owner that the subject site (Planning Authority site ref. VSR 19-18) is now liable for a payment of the levy for 2019 (€26,250) and 2020 (€26,250) a total of €52,500.00. Payment terms and methods are outlined.
- 6.2.2. A Notice of Determination of Market Value was issued to Elizabeth Dack and Anne Dack on the 13 May 2019 stating that the valuation placed on the site is €375,000 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 Elizabeth Dack and Anne Dack.
- 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 appellant has submitted an appeal to the Board, against the decision of Kilkenny County Council to demand a levy payment for a site that has already been placed on the Register. The grounds of the appeal can be summarised as follows:
 - No correspondence had been received by either Elizabeth Dack or Anne Dack in relation to the vacant site register, until the Demand for Payment Notice on the 10 May 2021. No opportunity was provided to them to make a

submission in relation to the section 7(1) Notice or appeal the placement on the site on to the register.

- The site referenced by the planning authority (VSR19-18) relates to Callan, not Thomastown.
- Part of the site includes a family home in different ownership, that of Anastasia Dack and David Comerford.
- The site outlined includes a garage and workshop, these are zoned commercial.
- The owners are trying to sell their properties in the area.

7.2. Planning Authority Response

In relation to section 7(1) and 7(3) notices, all efforts were made to ensure that owners received registered mail. None of the notices issued to Elizabeth Dack and Anne Dack, Maudlin Court, Thomastown, were returned by An Post. In fact, a submission was made in response to section 7(1) notice by Malone and Martin Solicitors (dated 16 April 2019) requesting verification that the site had been removed from the register.

The planning authority admit that a website error directed the public to view the wrong site with the correct identifier number, but this was corrected. All notices issued refer to the correct site at the correct location.

Site surveys indicated that the outline of the vacant site does not include a home.

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 made the case that they were not in receipt of any notices from the planning authority and were thus unable to prevent the site being placed on the register. The planning authority refute this claim by stating that no registered mail was returned undelivered. In addition, a correspondence was received almost six months later from the owner's solicitors to request confirmation that the site had been removed from the register.
- 8.3.2. With reference to whether the site should be on the register at all, the owner states that the site comprises a family home and lands zoned for commercial purposes. The planning authority are satisfied that the site qualifies as a site under the terms of section 5(1)(a) of the 2015 Act, as residential lands that are currently vacant.
- 8.3.3. Finally, the owner references other administrative failings such as the wrong site being referenced in the wrong town and that part of the site is in different ownerships. The planning authority acknowledge that initially, a website error meant that the correctly referenced site was linked to a site in Callan, an error that was corrected in May 2021. All other documentation available at the Council Offices and sent to the landowner, at all times, correctly referenced the site and its location. With reference to ownership, the planning authority state that as the lands are unregistered all attempts were made to establish the correct owners and in their efforts no mention is made of Anastasia Dack or David Comerford.
- 8.3.4. It is apparent that the owner is dissatisfied with the manner in which their lands was placed on the Vacant Site Register. This dissatisfaction did not translate into a

section 9 appeal and the time has passed in relation to that matter. The planning authority state that all correspondence was correctly addressed, and none returned. Furthermore, I see that correspondence with current addresses has been exchanged between the appellant and the planning authority successfully and the current appeal shows that the owner has been informed at all times during the entire process.

- 8.3.5. 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 current appeal and a solicitor's letter that requested a confirmation of removal of the site from the register, I am satisfied that the owners were suitably aware of the planning authority's intentions. With regard to website errors, these were corrected as soon as they were alerted to, and in any case the correct data was available to view at the Council offices and sent to owners. On the topic of website errors, I note that the valuation placed on the subject site is published on the Council's website as €400,000, yet the section 12(4) notice sent to the owner states €375,000. Errors of this nature aside, all available attempts were made to engage with the owners of the site and this is illustrated by correspondence to and from and ultimately the appeal now before the Board. According to the planning authority, they correctly referenced site maps and the register are and were available at the Council offices and sent to the landowners.
- 8.3.6. The site as outlined is entirely zoned for residential uses and so the criteria set out by section 5(1)(a) of the 2015 Act refers. None of the site includes lands that are zoned for commercial purposes, even though there may be structures on the site that could carry out such uses they appear not to be in use at present. Given that all of the site is located on lands zoned for residential purposes and none for commercial uses, I am satisfied that the site has been correctly entered onto the register under the criteria for residential lands.
- 8.3.7. In summary, the site was 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 they 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

8.3.8. The appellant has not set out any grounds of appeal to suggest that the site in question was in use for the period of 2019 and 2020. The main and only grounds of appeal put forward by the appellant relate to the placement of the site on to the register in the first place. A matter I have dealt with under section 8.2 of my report.

8.3.9. I have observed that the physical condition of the site has not altered since the site was placed on the register. The site has all the characteristics of a site that has not been in use for some time. In addition, I note that the lands have been agreed for sale according to signage displayed on the site. 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 on file 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 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. A Notice of Determination of Market Value was issued to Elizabeth Dack and Annie Dack on the 13 May 2019 stating that the valuation placed on the site is €375,000. No evidence from the appellant has been submitted to show that this valuation was appealed to the Valuation Tribunal and mention is made of attempts to dispose of the site but that a sale had fallen through.

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 Elizabeth Dack and Annie Dack on the 10 May 2021 for the value of €52,500. The calculation is based upon a charge for 2019 at €26,250 and for 2020 at €26,250, amounting to a total of €52,500 for both levy years.

8.5.3. I have already explained that a single Demand for Payment could 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 2018 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 28th 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

08 August 2022