



An  
Bord  
Pleanála

## Inspector's Report ABP-310423-21

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### Type of Appeal

Appeal against a Section 18 Demand for Payment.

### Location

Lands adjacent to Newpark Hotel, Castlecomer Road, Kilkenny.

### Planning Authority

Kilkenny County Council.

### Planning Authority VSL Reg. Ref.

VSR19-6.

### Site Owner

Newpark Hotel Limited.

### Planning Authority Decision

Demand for Payment.

### 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 (€105,000) and 2020 (€105,000) amounting to €210,000 for vacant site lands adjacent to the Newpark Hotel, Castlecomer Road, Kilkenny, and identified as VSR 19-6. The notice was issued to Newpark Hotel Limited and dated 10 May 2021. Newpark Hotel Limited 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 €1,500,000.
- 1.3. A Notice of Proposed Entry on the Vacant Sites Register was issued to Newpark Hotel Limited on the 20 November 2018. On the 31 December 2018, the Notice of Entry on the Vacant Sites Register was issued to Newpark Hotel Limited. This section 7(3) notice was not appealed to the Board.

## **2.0 Site Location and Description**

- 2.1. The site is located to the south and adjacent to the Newpark Hotel, north of Kilkenny city centre and along the Castlecomer Road. The site includes lands that would have been incorporated as the wider garden of a dwelling immediately northwest of the site. The site has frontage along the Castlecomer Road and includes a stone wall backed by mature trees. The site interior is not visible from the road. A gated entrance opens from the Castlecomer Road and the site is accessed across a cattlegrid. The remainder of the land bounds onto other properties, mostly in residential uses.

## **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 31 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.

**Section 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:

- Lands zoned primarily for residential purposes
- 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.

## **Volume 2 Kilkenny City**

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 **20/925** – permission for nine houses.

PA ref **14/424** – to extend permission 08/990149 nine houses.

Other planning applications refer to different variants of a nine house development.

## **6.0 Planning Authority Decision**

### **6.1. Register of Vacant Sites Report:**

First report (19/11/2018)– Site inspection took place on the 9 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 an aerial photograph.

### **6.2. Planning Authority Notice**

- 6.2.1. Kilkenny County Council advised the site owner that the subject site (Planning Authority site ref. VSR 19-6) is now liable for a payment of the levy for 2019 (€105,000) and 2020 (€105,000) a total of €210,000.00. Payment terms and methods are outlined.
- 6.2.2. A Notice of Determination of Market Value was issued to Newpark Hotel Limited on the 13 May 2019 stating that the valuation placed on the site is €1,500,000 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 Newpark Hotel Limited.
- 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:
- The site in question is in the ownership of Duesbury Limited, not Newpark Hotel Limited. Appeals in relation to the section 7(3) and 12(4) notices were not made by the owner, on account of Newpark Hotel Limited not being the owner of the site at the time. Given, that Newpark Hotel do not own the site they could not have appealed the various notices in any case.
  - Ownership did not change during 2019, Duesbury Limited and Newpark Hotel Limited are both part of the Flynn Hotels Group, but separate entities.
  - As Newpark Hotel Limited is not the sole owner it should not receive a demand for levy.

### **7.2 Planning Authority Response**

- 7.2.1. In relation to ownership, as the lands are unregistered the planning authority describe a planning history for the site that shows Newpark Hotel Limited as applicants for development from at least 2008. As both companies advanced by the appellant are part of the Flynn Hotels Group, ownership change is considered to be an issue that would not escape the charge. All reasonable efforts were used to establish ownership when notices were issued.

### **7.3. Further Response**

- 7.3.1. The appellant has submitted a response to the planning authority's submission, as follows:
- 7.3.2. Ownership details on planning applications are contradictory, some refer to Newpark Hotel, a more recent application is in the name of John and Allen Flynn. The 2015 Act does not state that any company under the umbrella of another can be charged the levy.

## **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 1<sup>st</sup> 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 stated that the wrong owners were sent notices and the levy demand should not apply solely to them, Newpark Hotel Limited.
- 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; because as it is stated by them, the wrong owners had been notified. However, given the current appeal and further observations that refer to matters that entirely revolve around ownership, engagement of sorts has occurred. The appellant argues that the planning authority cannot, as it is not allowed for under the 2015 Act, apply the levy to any one company within an overall group of companies. In this case according to the appellant, the levy has been applied to Newpark Hotel Limited, when the charge should apply to Duesbury Limited. 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 being directed to an entity that does not own the site.
- 8.3.3. The planning authority point out that all reasonable attempts were made to establish the ownership of the site, that included a detailed planning search because the site is currently unregistered. Given that a number of planning applications were made in the name of Newpark Hotel Limited, that name was selected as the owner of the site. I note that permission had been granted in 2020 to John Flynn and Allen Flynn and the appellant notes this too and asks why the demand notice was not ascribed to the Flynn group instead.
- 8.3.4. I acknowledge that establishing the correct and up to date owner of a piece of land can be difficult especially if registry details are not updated. The planning authority have shown how they seek to establish ownership and to a certain extent if no satisfactory engagement takes place then the onus is on those notified to change matters. Newpark Hotel Limited did not at any time correct the record with regard to ownership and it is only now that the matter has financial ramifications that an appeal

is made. The 2015 Act states under section 17 that 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. The appellant points out that this is not the case, and so a zero charge is not requested for by them.

8.3.5. The planning authority highlight the issue of change of ownership in order to clarify what might be meant with regard to the appellant's grounds of appeal, section 17 of the 2015 Act refers. In particular, the Act highlights that if ownership of the site transfers from one company to an associated company, then that is not a change of ownership for the purposes of applying a zero charge. The planning authority contend that as a company within the overall group, Flynn Hotels Group, then, unless corrected, the planning authority have done all within their power to establish ownership to the best of their knowledge. This is a matter that cannot be settled within the section 18 appeal against a demand for payment of the levy framework. A section 18 appeal does not provide the opportunity to correct who or what is the owner of a site, all of this should have been settled before a demand for payment was issued. As far as the planning authority is concerned, the owner of the site has been clarified and no correspondence was directed to them to alter any notices and I agree with this position.

8.3.6. In summary, site was placed on the register in December 2018 because 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

8.3.7. 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 ownership of the site. A matter I have dealt with under section 8.2 of my report.

8.3.8. 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. 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 in terms of ownership, 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. 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 Newpark Hotel Limited on the 13 May 2019 stating that the valuation placed on the site is €1,500,000. 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 Newpark Hotel Limited on the 10 May 2021 for the value of €210,000. The calculation is based upon a charge for 2019 at €105,000 and for 2020 at €105,000, amounting to a total of €210,000 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 1<sup>st</sup> of January 2019, the 1<sup>st</sup> of January 2020 and was a vacant site on the 4<sup>th</sup> June 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<sup>st</sup> of January 2019 or the 1<sup>st</sup> 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.

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Stephen Rhys Thomas  
Senior Planning Inspector

08 August 2022