



An  
Bord  
Pleanála

## Inspector's Report ABP-310429-21

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<b>Type of Appeal</b>	Appeal against a Section 18 Demand for Payment.
<b>Location</b>	Sion Road, Kilkenny.
<b>Planning Authority</b>	Kilkenny County Council.
<b>Planning Authority VSL Reg. Ref.</b>	VSR20-6.
<b>Site Owner</b>	Signbrook Ltd.
<b>Planning Authority Decision</b>	Charge Levy.
<b>Date of Site Visit</b>	27 July 2022.
<b>Inspector</b>	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 2020 amounting to €140,000 for vacant site lands at Sion Road, Kilkenny, and identified as VSR 20-6. The notice was issued to Diocese of Ossory and dated 10 May 2021. Signbrook 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 Kilkenny County Council on the 22 September 2020. The value of the subject site is stated to be €2,000,000.
- 1.3. A Notice of Proposed Entry on the Vacant Sites Register was issued to the Diocese of Ossory and Brian Dunlop Architects on the 22 November 2019. On the 31 December 2019, the Notice of Entry on the Vacant Sites Register was issued to Diocese of Ossory and Brian Dunlop Architects. This section 7(3) notice was not appealed to the Board.

## **2.0 Site Location and Description**

- 2.1. The subject site is located on the eastern side of Kilkenny City, east of the N10 Ring Road and accessed off Sion Road. There are existing structures on the site including a two-storey residential structure which gables the public road. There are other structures which were used as a former retreat centre.
- 2.2. There is mature landscaping/trees to the west and south of the site. A wall c. 2.5m in height is located along the northern (public road) boundary. The River Nore is located to the south of the site. The lands fall from north to south down to the River Nore. Sion Road is characterised by low density housing. There are a number of industrial/commercial business located at the junction of Sion Road with the Dublin Road to the north.

## **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 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. **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 Low Density Residential – ‘Objective: To protect, provide and improve residential amenities at low density. Low density housing is defined as not more than 10 units per ha (4 per acre) on average and must have regard to the character of the area.’

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.

## **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**

### **5.1. Relevant Planning applications:**

- 5.1.1. Planning application ref: **21300** – Permission granted for the demolition of existing buildings (total gross floor c. 3,031 Sqm) - Construction of a residential development of 43 dwellings. Residential and visitor car parking spaces, pumping station compound, landscaping and open spaces. Closure of existing vehicular access from

the Sion Road and provision of new vehicular access to the east. All other site works, landscaping, boundary treatments and services provision.

5.1.2. ABP-**307012**-20 – Permission refused for Demolition of existing buildings, construction of 120 residential units.

5.1.3. Planning application ref: **14586** – Permission for 27 houses.

## 6.0 **Planning Authority Decision**

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

First report (19/11/2019)– Site inspection took place on the 7 November 2019. The site is greater than 0.05 Hectares, is zoned residential, there is a need for housing and site is suitable for housing.

Second report (18/12/2019)– Site inspection took place on the 7 November 2019. The site is greater than 0.05 Hectares, is zoned residential, there is a need for housing and site is suitable for housing. In response to the section 7(1) notice it is noted that a strategic housing application is to be lodged and that ownership may change.

The reports are 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 20-6) is now liable for a payment of the levy for 2020, a total of €140,000.00. Payment terms and methods are outlined.

6.2.2. A Notice of Determination of Market Value was issued to the Diocese of Ossory and separately to Torca Developments Ltd on the 22 September 2020 stating that the valuation placed on the site is €2,000,000 and instructions to make an appeal to the Valuations Tribunal.

6.2.3. A section 7(3) Notice issued on the 31 December 2019, advising the owner that their site had been placed on the register, accompanied by a site map. The Notice was sent to Diocese of Ossory and Brian Dunlop Architects.

6.2.4. A section 7(1) Notice issued on the 22 November 2019, advising the owner (Diocese of Ossory and Brian Dunlop Architects) 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:

- A detailed planning history is provided and sets out the refusal of a strategic housing development (SHD) by the Board, ABP-307012-20 refers. A current planning application for 43 houses is with the planning authority, 21/300 refers.
- The registered owner of the site was not issued with the Demand Notice.
- Ownership has changed, and no levy should be charged for 2020.
- For 2020, the site was not vacant but in use and physically upgraded (bills and receipts attached).
- It is not evident whether the site was assessed correctly, and it is not clear that the relevant time period had elapsed between inspections. The site was in fact in use as a retreat for the period before December 2017.

The appeal is accompanied by bills/receipts, a certificate of incorporation and notices.

### **7.2. Planning Authority Response**

7.2.1. The lands were unregistered so, the 7(1) notice was sent to the known owners – Diocese of Ossory and agents at pre-planning discussions Brian Dunlop Architects. The section 7(3) notice was also addressed to these parties and a cover note was sent to the Diocese of Ossory seeking clarity over change of ownership. Both parties could have appealed placement on to the register, and they did not.

7.2.2. A change of ownership was not confirmed, despite the planning authority seeking confirmation. If a site is unregistered, this is the only means by which ownership can be confirmed, that is if parties can adequately demonstrate change in ownership.



7.2.3. With regard to the use of buildings as demonstrated by utility bills, the use of these buildings for unauthorised uses cannot be ruled out.

### 7.3. **Further Response**

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

7.3.2. The relevant time period for site investigation is again queried.

7.3.3. In addition, the question is raised whether the criteria set out under section 5(1)(a) has been demonstrated, need for housing not demonstrated and site suitability not concluded.

### 7.4. **Further Planning Authority Response**

7.4.1. The planning authority concede that a change of ownership occurred in 2021 and in this instance no charge shall be levied for 2020 and 2021. The site shall stay on the register and a demand may again issue in 2023 for the levy year 2022 unless the site is deemed to be in full and active use.

## 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 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 2019. No Section 9 appeal was made to the Board. The appellant has stated that the site was in use as a religious retreat centre and has provided utility and other invoices to demonstrate this. Questions are also raised upon whom the notices were served and that the a period of twelve months did not elapse before the site was placed on the register. Finally, and crucially, the appellant points out that the site changed ownership in 2021 and that a zero charge should apply. The planning authority agree and in a communication dated 26 January 2022 concede that a qualifying change in ownership to Signbrook Limited occurred in 2021 and no levy is due for 2021 or 2020.
- 8.3.2. The site was initially placed on the register in December 2019 and the majority of the site was considered vacant for the period of twelve months prior to that date. The appellant questions whether the required twelve-month period elapsed and cites other appeals in Kilkenny that fell through because of this failing. I note that a number of early vacant site registrations in Kilkenny were appealed and cancelled because it could not be confirmed that the process had been correctly followed. As the Board will note, a number of current and recent appeals overcame this singular issue, and I am satisfied that there is no scope to revisit the methodology to place the site on the register in this instance.
- 8.3.3. 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. In response to the appellant's claim that the required twelve month period did not elapse, I note that within the vacant site reports prepared by the planning authority, reference is made to a planning application report that refer to site visits in September 2015, at which point it was noted that the land to the rear of Sion House lay vacant. It may be the case that buildings on site were in use, but the majority of the site lay vacant and I find this to be an acceptable approach. The owner did not appeal this decision of the planning authority; although I can see that a submission was made in respect to the

initial section 7(1) notice. I am satisfied that the owner engaged fully with the process after the section 7(1) notice. In addition, given the owner's appeal and further observations that refer to change in ownership and other matters, it is evident that the appellant has at times been in contact with the planning authority and the process of site registration. The opportunity to appeal the placement of the site on the register was passed up by the owner and I see no merit to revisit the matter here.

8.3.4. Neither the appellant nor the planning authority raises any issues with regard to the need for housing in the area or the site suitability for housing, sections 5(1)(a)(i) and (ii). I observe that permission has recently been permitted by the planning authority for housing (43 units) on this site, planning application ref: 21300 refers. It is apparent that the site is suitable for housing and that there is a need for housing in the area.

8.3.5. In summary, the site was initially placed on the register in December 2019 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 2020

8.3.6. The appellant has set out that the site was in use through 2020 as a religious retreat, significantly large electricity bills are presented and so too are maintenance bills. The planning authority point out that they cannot be entirely certain as to where the electricity bills apply to and also raise a query about unauthorised development. I note that no enforcement action has been taken by the planning authority and so I am not concerned that the use of the site, if it did occur, would invoke section 6(7) of the 2015 Act. In relation to the invoices offered by the appellant, they seem to indicate a considerable cost accruing to the site, and this would point to some form of occupation or use. In the absence of a strong opposition to this contention that the site was in use as a religious retreat during 2020 from the planning authority, I am inclined to conclude that a portion of the site was active. A probable state of affairs

corroborated by the ownership of the site by a religious institution and eventual change of ownership as the site eventually secured planning permission for residential development. However, I return to the evidence provided by the planning authority that the majority of the site was not use but vacant. Even though the buildings on site may have been in use as a retreat centre in the past, the majority of the site was not in use and hence the site should remain on the register.

- 8.3.7. The appellant has not put forward any other uses for the site over the relevant charge period (2020) but has pointed to a use as a religious retreat in the past and during 2020 and I accept that this may have been the case. However, no other uses, for the greater balance of the entire lands have been presented and so I cannot recommend that the entire site should be removed from the register. I am however, satisfied that a change in ownership would return a zero charge and I examine this next.

#### 8.4. Levy Calculation

- 8.4.1. A Notice of Determination of Market Value was issued to the Diocese of Ossory (and copied to Torca Developments) on the 22 September 2020 stating that the valuation placed on the site is €2,000,000. No evidence from the appellant has been submitted to show that this valuation was appealed to the Valuation Tribunal.
- 8.4.2. A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to the Diocese of Ossory (and copied to Torca Developments) on the 10 May 2021 for the value of €140,000.
- 8.4.3. 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. However, the appellant has referred to a change in ownership and that occurred in 2020 and to which the planning authority concede as a situation where a zero charge should apply. The relevant documents have been submitted and I am satisfied that a change in ownership has indeed occurred. Section 17 of the 2015 Act refers and states as follows:

*(1) 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.*

*(2) Subsection (1) shall not apply where—*

*(a) ownership of the site transfers from one company to an associated company,*

*(b) the owner of the site transfers it to a connected person (other than where ownership of the site devolves on the death of the owner), or*

*(c) ownership of the site changes, in the opinion of the planning authority in whose functional area the site is located, for the sole or principal purpose of avoiding the obligation to pay vacant site levy.*

*(3) In subsection (2) “associated company”, in relation to another company, means—*

*(a) a holding company or a subsidiary (both within the meaning of the Companies Act 2014) of that other company, or*

*(b) a body corporate that is a subsidiary of the same company of which the other company is a subsidiary.*

*(4) For the purposes of this section a person is connected with the owner of a vacant site if, but only if, he or she is—*

*(a) that owner’s spouse, civil partner, parent, brother, sister, child, step-child or lawfully adopted child,*

*(b) a person acting in his or her capacity as the trustee of any trust, the principal beneficiaries of which are the owner of the vacant site, the owner’s spouse or any of the owner’s children or any body corporate which the owner controls, or*

*(c) a partner of that director.*

8.4.4. I am of the opinion that section 17(1) refers in this instance, it would seem that a levy charge of zero should apply to the levy year 2020 and 2019. In my view this is a calculation issue and not whether a site should be removed from the register. As I have concluded in section 8.3 of my report, portions of the site were not vacant during 2020, however the majority of the site was vacant and the site should remain on the register.

8.4.5. A section 18 appeal allows the owner to question that the amount of the levy has been correctly calculated in respect of the site by the planning authority. If the Board determine that the amount of the levy has been incorrectly calculated in respect of a vacant site it shall give written notice to the planning authority of the correct amount who shall amend the demand made in respect of that year in accordance with the revised amount. In my opinion, this is just such an occurrence, given the information about the change of ownership submitted by the previous owner I find that section 17(1) of the 2015 Act applies and that the amount of vacant site levy to be charged in respect of the subject site for 2020, and for the preceding year (2019), should be zero.

## 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 2020 and was a vacant site on 4 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 cannot confirm that the amount of the levy has been correctly calculated in respect of the vacant site and that due to Section 17(1) of the Urban Regeneration and Housing Act 2015 (as amended), the amount of vacant site levy to be charged in respect of the site for the year 2020, and for the preceding year 2019, shall be zero. The demand for payment of the vacant site levy under Section 15 of the Urban Regeneration and Housing Act 2015 is, therefore, cancelled.

## 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 2020,
- (e) A change in ownership that occurred in 2020, the amount of the levy has been incorrectly calculated in respect of the site by the planning authority,

the Board considered that, in accordance with Section 18(2)(b) and 18(4) of the Urban Regeneration and Housing Act 2015 (as amended), the Board has determined that the amount of the levy has been incorrectly calculated in respect of the vacant site and in accordance with Section 17(1) of the Urban Regeneration and Housing Act 2015 (as amended), the amount of vacant site levy to be charged in respect of the site for the year 2020, and for the preceding year 2019, shall be zero. The Board considered that it is appropriate that a notice be issued to the planning authority who shall amend the demand made in respect of the year 2020 in accordance with the revised amount (zero) but shall retain the entry on the Vacant Sites Register.

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Stephen Rhys Thomas  
Senior Planning Inspector

08 August 2022