



An  
Bord  
Pleanála

## Inspector's Report ABP-310433-21

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<b>Type of Appeal</b>	Appeal against a Section 18 Demand for Payment.
<b>Location</b>	Site at Hebron Road, Kilkenny, Co. Kilkenny.
<b>Planning Authority</b>	Kilkenny County Council.
<b>Planning Authority VSL Reg. Ref.</b>	VSR18-27.
<b>Site Owner</b>	Herbron Ventures Limited.
<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 2019 amounting to €56,350 for vacant site lands at Site at Hebron Road, Kilkenny, Co. Kilkenny, and identified as VSR 18-27. The notice was issued to Herbron Ventures Limited and dated 10 May 2021. Herbron Ventures 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 22 May 2018. The value of the subject site is stated to be €805,000.
- 1.3. A Notice of Proposed Entry on the Vacant Sites Register was issued to Daniel McEvoy and Breda McEvoy on the 3 November 2017. On the 19 December 2017, the Notice of Entry on the Vacant Sites Register was issued to Mrs McEvoy. 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 Kilkenny city centre along the Hebron Road. The lands are situated in an area characterised by a variety of land uses, driving test centre, GAA sports grounds, commercial/retail and residential uses. At present the site is occupied by a recently completed housing development of apartments and houses, some of which are occupied.

## **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 19 December 2017 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 Phase 1 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.

## **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**

### **5.1.1. Subject Site:**

PA ref **18830** – Permission for 58 dwelling units.

## **6.0 Planning Authority Decision**

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

First report (17/10/2017) – Site inspection took place on the 14 March 2017. The site is greater than 0.05 Hectares, is zoned residential, there is a need for housing and site is suitable for housing.

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

- 6.2.1. Kilkenny County Council advised the site owner that the subject site (Planning Authority site ref. VSR 18-27) is now liable for a payment of the levy for 2019, a total

of €56,350.00. Payment terms and methods are outlined, the notice is dated 10 May 2021. Notice states that the site VSR18-27 is now cancelled.

- 6.2.2. A Notice of Determination of Market Value was issued to Mrs Breda McEvoy on the 22 May 2018 stating that the valuation placed on the site is €805,000 and instructions to make an appeal to the Valuations Tribunal.
- 6.2.3. A section 7(3) Notice issued on the 19 December 2017, advising the owner that their site had been placed on the register, accompanied by a site map. The Notice was sent to Mrs McEvoy.
- 6.2.4. A section 7(1) Notice issued on the 3 November 2017, 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 enter the subject site on the Register and charge the levy. The grounds of the appeal can be summarised as follows:

- The site was acquired by Hebron Ventures Limited in October 2018 and is to be delivered as a turnkey social housing project to the Council. Initial grant of permission May 2018. Formal approval from the Department of Housing for funding was received in March 2020, the project commenced on 4 August 2020. The developer did not delay the project and it now progresses.

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

- 7.2.1. The site was first entered onto the register in 2017 under the name of Mrs Breda McEvoy, following a change of ownership in 2019, the register was changed and Hebron Ventures Limited was entered. The levy was cancelled for 2020 and so no levy due. A change of ownership occurred and so there is no levy due for 2018 or 2017. However, the charge for 2019 remains outstanding.

### **7.3. Further Response**

- 7.3.1. The appellant has submitted a response to the planning authority's submission, as follows:
- 7.3.2. Though ownership changed in February 2019, at no point did the owner delay developing the site for housing. In addition, there was no demand for housing in 2019 in Kilkenny and if the properties had been marketed as private dwellings money would have been lost.

## **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.

### **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 19 December 2017. No Section 9 appeal was made to the Board. Due to a change of ownership in October 2018 the levy demand for 2018 and 2017 was set at zero by the planning authority. In addition, the charge for 2020 has not been sought and the site has been struck from the register. However, the planning authority now seek the levy charge for 2019 and it is this demand that is the subject of the appeal.



- 8.3.2. The appellant has stated that there was no delay in the progression of the site to provide housing and details are set out to show the relative speed that housing has been provided on site, from change of ownership in late 2018 to the completion of dwellings in 2022. Evidently, there was a pause in the progression to site works in 2019 until finance was secured from the Department of Housing and subsequently construction began in August 2020. I observe that the housing development is now more or less complete and occupied. The planning authority have demanded payment for 2019, a year during which the site was vacant. The appellant has not advanced a use for the lands concerned during 2019.
- 8.3.3. The appellant has not challenged whether the site should have been placed on the register in the first place. In summary, the site was initially placed on the register in December 2017 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
- 8.3.4. The appellant has set out how the site was brought from a vacant site to housing development between the change in ownership in late 2018 to construction in 2021. The events of applying and securing permission are set out and the wait period for approval for finance from the Department of Housing is explained. The appellant states that at no time did they delay the progression of the site to the provision of housing. The planning authority do not disagree with this scenario but outline that a charge for 2019 remains outstanding.
- 8.3.5. The planning authority have rightly demanded a charge for 2019. Later that same year planning permission was sought for a housing development. This is not a matter that I would consider as an actual use that would lift the site from the register, in this respect I reference circular PL7/2016. Permission was eventually secured, and development commenced, a charge for 2020 onwards, has not been sought by the planning authority. It is accurate to say that no actual construction activity or other

use took place during 2019 and neither the applicant nor planning authority dispute this fact. The site was vacant during 2019 and so the charge can be demanded for that year.

8.3.6. On the date of my site visit, I observed that the lands have now yielded a housing development, mostly complete and partially occupied. The appellant points out that the lands would deliver a 100% social housing development, and this appears to be the case.

8.3.7. There are two main parts to a section 18 appeal with respect to a vacant site and its retention on the register. Firstly, that the burden on showing the site is not a vacant site is on the owner of the site, section 18(2)(a) as follows:

*On an appeal under this section the burden of showing that—*

*(a) the site was no longer a vacant site on 1 January in the year concerned,...*  
*is on the owner of the site.*

8.3.8. In this instance, I have not seen any information on the file that would lead me to conclude that on the 1 January 2019 anything had changed in relation to the site to avoid a demand for payment and the site would stay on the register.

8.3.9. The other part of a section 18 appeal, is the role of the Board and this is outlined by section 18(3) as follows:

*Where the Board determines that a site was no longer a vacant site on 1 January in the year concerned, or is no longer a vacant site on the date on which the appeal under this section is made, it shall give written notice to the planning authority who shall cancel the entry on the register in respect of that site and shall cancel the demand made in respect of that year.*

8.3.10. Dispensing with the first element, that of the 1 January in the year concerned (2019), as above, I do not consider that matters changed for the site to avoid the levy and remove the site from the register. However, the second part of section 18(3) refers to the date on which the appeal was made, and this is relevant. In my view it allows the Board to consider matters that pertain to the site up until the day the appeal was made and in this case that would be the 4 June 2021. It is evident from the information on file that the project commenced in August 2020 and during 2021, a significant amount of works had occurred on the site to progress the planning

permission. These works have continued to occur on site, as an almost complete housing development was observed on the day of my site visit. I am satisfied that even though the site may have been a vacant site as of the 1 January 2019 it was no longer a vacant site on the date on which the appeal was made, 4 June 2021. This would accord with the spirit of the 2015 Act as articulated by circular letter that the levy is intended to act as a site activation and release mechanism, to incentivise the development of vacant or idle sites in urban areas identified by planning authorities as “regeneration land” or “residential land”, with a view to bringing such sites into beneficial use. This is just such a case where a previously underutilised and vacant residentially zoned site has now come into a beneficial use, in this case for social housing. In my mind the 2015 Act has served its purpose and brought into use a tract of land suitable for housing and it would be reasonable for the Board to conclude that the site should be removed from the register and the charge cancelled. In this instance the planning authority have achieved a key Development Plan objective for the development and renewal of areas in need of regeneration through the effective use of the Vacant site Register.

#### **8.4. Levy Calculation**

- 8.4.1. A Notice of Determination of Market Value was issued to Breda McEvoy on the 22 May 2018 stating that the valuation placed on the site is €805,000. 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 Hebron Ventures Limited on the 10 May 2021 for the value of €56,350.
- 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.

#### **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 cancel the Notice of Demand for Payment of Vacant Site Levy as the site was not a vacant site on the 4 June 2021,

the date on which the appeal was made. The demand for payment of the vacant site levy under Section 15 of the Urban Regeneration and Housing Act 2015 is, therefore, cancelled. 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.

## **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 extent of construction works on the site on the 4 June 2021, the date on which the appeal was made,

the Board is not satisfied that the site was a vacant site on the 4 June 2021, the date on which the appeal was made. The demand for payment of the vacant site levy under Section 15 of the Urban Regeneration and Housing Act 2015 is, therefore, cancelled.

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Stephen Rhys Thomas  
Senior Planning Inspector

08 August 2022