



An  
Bord  
Pleanála

## Inspector's Report ABP-310436-21

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<b>Type of Appeal</b>	Appeal against a Section 18 Demand for Payment.
<b>Location</b>	Middleknock, Kilkenny.
<b>Planning Authority</b>	Kilkenny County Council.
<b>Planning Authority VSL Reg. Ref.</b>	VSR20-5.
<b>Site Owner</b>	Patrick and Ann O'Brien.
<b>Planning Authority Decision</b>	Charge Levy.
<b>Date of Site Visit</b>	01 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 €13,650 for vacant site lands at Middleknock, Kilkenny, and identified as VSR 20-5. The notice was issued to Patrick and Ann O'Brien and dated 10 May 2021. Patrick and Ann O'Brien have 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 €195,000.
- 1.3. A Notice of Proposed Entry on the Vacant Sites Register was issued to Patrick and Ann O'Brien on the 21 November 2019. On the 31 December 2019, the Notice of Entry on the Vacant Sites Register was issued to Patrick and Ann O'Brien, this was appealed and confirmed by the Board on the 29 May 2020.

## 2.0 Site Location and Description

- 2.1. The site is located close to the roundabout junction of Dublin Road and the N10, on the eastern outskirts of Kilkenny City. The site can be accessed from a spur laneway that runs parallel to the Dublin Road. A terrace of houses is located to the west of the site. The roadside boundary comprises a combination of fencing and some mature trees and hedging. The site is level, overgrown with grass and with some groupings of mature trees. There are no structures on the site and no appearance of any construction activity having taken place on the site.

## 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 after appeal to the Board 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 **20/9** – Permission for 8 two bed houses and all associated site works on lands. (amended by condition)

PA ref **17/151** – Permission refused to construct 8 two bed apartments in 4 blocks and all associated site works on lands.

### **5.1. VSR History**

ABP-**306516**-20. Entry on the vacant site register, confirmed.

## **6.0 Planning Authority Decision**

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

First report (12/11/2019) – Site inspection took place on the 9 October 2018 and 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 (19/12/2019) – Site inspection took place on the 9 October 2018 and 7 November 2019. The submission in relation to the section 7(1) notice was summarised and responded to. Even though the site had previously been removed from the register, that was to do with administrative procedures, at all times the site met the criteria for a vacant site and still does.

The reports are accompanied by photographs and a 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 20-5) is now liable for a payment of the levy for 2020 for a total of €13,650.00. Payment terms and methods are outlined.
- 6.2.2. A Notice of Determination of Market Value was issued to Patrick and Ann O'Brien on the 22 September 2020 stating that the valuation placed on the site is €195,000 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 Patrick and Ann O'Brien and appealed to the Board, ABP-306516-20 refers.
- 6.2.4. A section 7(1) Notice issued on the 21 November 2019, 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. The grounds of the appeal can be summarised as follows:
  - Permission was refused in 2017, for a number of reasons, one of which was access arrangements. After further consultation a revised proposal was lodged, after more refinements, permission was granted March 2021. As the site could not be serviced (roads) it should not have been considered to be a vacant site for 2020.

- The valuation is incorrect, as permission was granted for 7 units not 8, a reduction in valuation should be applied.

## 7.2. **Planning Authority Response**

The site was appealed to the Board under ABP-306516-20 (January 2020), the entry was confirmed and so the site was considered to be a vacant site.

With regards to the valuation of the site, this is a matter for the Valuation Tribunal.

## 7.3. **Further Response**

- 7.3.1. During the years 2018/2019 numerous meetings were conducted to resolve the access arrangements. Based on these discussions a new planning application was lodged and further refinements were required by the Council (further information was requested). Permission was eventually granted in March 2021. All efforts have been made to progress this site, consideration should be given to the fact that Kilkenny County Council delayed matters with regard to road access.
- 7.3.2. The site valuation should be reconsidered as the site has permission for seven units not eight.

## 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<sup>st</sup> December 2019. Subsequently a Section 9 appeal was made to the Board under appeal reference ABP-306516-20. A detailed assessment as to whether the site constituted a vacant site was carried out by the Reporting Inspector. It was determined by the Board that given the recorded site visits, site photographs, the experience of the planning authority with regards to the area and that the owner has presented no information to the contrary, the site could be placed on the register, these matters have not changed and are not directly addressed by the appellant in the current appeal.

8.3.2. However, the appellant reiterates issues that were raised in the initial section 9 appeal, and it is the matter of planning delays and indecision on the part of the planning authority that has led to the site remaining undeveloped. I am satisfied that no new information has come to the fore since the Section 7(3) Notice was issued and that this matter has already been adjudicated on and should not be re-examined. I do not intend to revisit the decision to place the site on the register, in terms of the current appeal no parties dispute whether the site should have been placed on the register in the first place. Though, the appellant does question whether the site could be serviced by public infrastructure to enable housing to proceed and I deal with this observation next.

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

8.3.3. The owner has not advanced any use for the site for the year concerned, 2020. The matters that arise from the appeal grounds refer to the owner's dissatisfaction with their engagement with the planning authority and how vehicular access arrangements from the public road led to a lengthy planning process. All of this engagement ultimately resulted in planning consent in March 2021. It is the appellant's view that the lack of a workable access arrangement during this process that meant that the site could not be a vacant site because it was not serviced by public infrastructure. However, this cannot be the case as the site sits proximate to a public road and ultimately permission was granted after a satisfactory solution was

agreed. I am satisfied that the site the site was and is served by the public infrastructure and facilities (within the meaning of section 48 of the Act of 2000) necessary to enable housing to be provided and serviced, section 6(5)(b) of the 2015 Act is met.

8.3.4. In the first instance, I do not consider and nor does the 2015 Act, that the administrative task of securing planning permission can be taken as an actual use for the site, it is not. It may be frustrating for the owner to experience planning delays, but these are neither the fault of the planning authority or the applicant. In any case, as I have already stated the administrative tasks regarding a site cannot be seen as a bona fide use as defined by the Act, that being used for a purpose that comprises housing or the development of housing, in this case.

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 many of the administrative tasks to pave the way for development works have been completed by the owner, principally planning consent. They do not alter the use of the site, that has remained unchanged.

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 year 2020, the site should remain on the register and the levy charged for that year.

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

- 8.4.1. A Notice of Determination of Market Value was issued to Patrick and Ann O'Brien on the 22 September 2020 stating that the valuation placed on the site is €195,000. No evidence from the appellant has been submitted to show that this valuation was appealed to the Valuation Tribunal. In the current appeal before the Board, the owner has stated that the value of the site should be reappraised because permission was granted for only seven units and not the eight that were applied for. Though the appellant makes a cogent case in relation to the market value of the site, the time for that appeal has passed. At the date of the valuation notification (22 September 2020), the appellant could have appealed directly to the Valuation Tribunal within 28 days. This may or may not have happened. In any case, unfortunately for the appellant, the Board has no jurisdiction to adjudicate a determination of market value, that is for the Valuation Tribunal to do.
- 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 Patrick and Ann O'Brien on the 10 May 2021 for the value of €13,650. The calculation is based upon a charge for 2020. 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.

#### **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 2020, and was a vacant site on the 2<sup>nd</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 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

20 July 2022