



An  
Bord  
Pleanála

## Inspector's Report ABP-310447-21

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<b>Type of Appeal</b>	Appeal against a Section 18 Demand for Payment.
<b>Location</b>	77 Maudlin Street, Kilkenny.
<b>Planning Authority</b>	Kilkenny County Council.
<b>Planning Authority VSL Reg. Ref.</b>	VSR20-9.
<b>Site Owner</b>	Tom Corr.
<b>Planning Authority Decision</b>	Demand for Payment.
<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 €12,950 for vacant site lands at 77 Maudlin Street, Kilkenny, and identified as VSR20-9. The notice was issued to Tom Corr and dated 10 May 2021. The owner Tom Corr 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 €185,000.
- 1.3. A Notice of Proposed Entry on the Vacant Sites Register was issued to Tom Corr the 21 November 2019. On the 31 December 2019, the Notice of Entry on the Vacant Sites Register was issued to Tom Corr. This section 7(3) notice was not appealed to the Board.

## 2.0 Site Location and Description

- 2.1. The site is located at Maudlin Street in the centre of Kilkenny City, north of the County Council offices. The site comprises a large detached dwelling set in its own grounds with frontage to Maudlin Street and can be accessed from a rear laneway known as Berkely Row. The dwelling on site is not in a ruinous condition, but has the appearance of a long period of vacancy. The overall site is moderately well maintained, though, the property and boundary walls show signs of irregular care.

## 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 the 2015 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 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**

PA ref **07990064** and ABP reference **PL62.228288** – Permission refused for (a) demolition of existing dwelling and side extensions; (b) construction of a 3 storey building with 5 apartments and provision of 12 basement parking spaces; (c) construction of two of 2 storey mews buildings at the rear with 4 apartments; (d) new vehicular access from laneway and all associated site works

## **6.0 Planning Authority Decision**

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

First report (19/11/2019)– Site was inspected as part of the Derelict Sites Register, September 2015. Site visit (VSR) conducted 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. The report is 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 20-9) is now liable for a payment of the levy for 2020 of €12,950.00 Payment terms and methods are outlined.
- 6.2.2. A Notice of Determination of Market Value was issued to Tom Corr on the 22 September 2020 stating that the valuation placed on the site is €185,000 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 Tom Corr.
- 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 landowner 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:
  - Notices – the section 7(3) notice arrived to Tom Corr after the 28 day appeal period.
  - Tom Corr became the sole owner of the site in December 2020. Tom Corr had numerous pre-planning discussions in relation to the site, and this has resulted in him being indicated as the owner of the site, he was not. By February 2020 Tom Corr was the joint owner of the site with Patrick Manning, the AGHA Partnership. The planning authority were notified of these changes. On the 17 December 2020, Tom Corr provided the relevant details concerning change of ownership to the planning authority; deed of settlement and deed of transfer. However, legal advice to the Council confirmed that the details submitted attract section 17(2) of the 2015 Act and so a zero charge cannot apply. The levy should not apply to Tom Corr as he was not the sole owner of the site.

- Since taking ownership of the site (December 2020), Tom Corr has maintained and tended to remedial works on site. The dwelling on site could be restored to the use as a home set within a garden.

The appeal is accompanied by a number of documents to substantiate the grounds as follows: all Notices, email correspondence between T Corr and the planning authority, a planning application form showing AGHA Partnership as applicant, solicitors correspondence confirming change of owners, photographs with dates showing remedial works and a signed/dated legal agreement

## 7.2. Planning Authority Response

- Legal advice sought with regard to the 2015 Act and change of ownership, rectification of title is not a basis that would attract a zero charge as specified by the 2015 Act.
- All reasonable enquiries were made to ensure that the correct persons received any notices with regard to the Vacant Site Levy. No notices were returned by An Post, as not known at this address.
- The condition of the site is not a requirement for residential lands, such as this. The house has been vacant for a number of years and continues to be so and fulfils the requirements set out by section 5(1)(a) of the 2015 Act.

## 7.3. Further Response

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

- The planning authority refer to legal advice that states 'rectification of title' this implies an error in title. There was no error in title, the property was transferred from joint to single ownership. The lack of a copy of legal advice limits the appellant's view on such legal advice and should also limit the Board's view with regard to same.
- The appellant has submitted their own legal advice with respect to section 17(4) of the 2015 Act, it does not apply in this instance.
- Planning application form documentation clearly shows that the applicant was AGHA Partnership.



## **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<sup>st</sup> December 2019. 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 as residential lands, but has advanced a number of legal reasons why the owner should not be levied the charge for 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 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 appeal and further observations that refer to legal ownership in terms of corporate, joint or sole ownership. 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 that has been charged to Tom Corr.

8.3.3. The owner has outlined how the site shouldn't be on the register of vacant sites, because they have taken a number of steps to tidy up the site. The planning authority point out that it is not the appearance of the site that accounts for placement on the register, that is a matter for regeneration lands. The site is zoned for residential uses and so the criteria set out by section 5(1)(a) of the 2015 Act refers. I agree with the point made by the planning authority, and I note that though permission was refused in 2008 (PL62.228288 refers), the reasons for refusal related to design rather than the availability of physical infrastructure. In addition, the site is zoned residential and so I accept that there is a need for housing in Kilkenny. It is clear that more housing is necessary in and around Kilkenny City and this is the reason for zoned land and a core strategy that anticipates growth. In this respect I note that the Regional Spatial and Economic Strategy for the Southern Region identifies Kilkenny as a key town where growth is expected to be channelled. The Development Plan has identified that land zoned Existing Residential can be considered as a vacant site and this is the case with the subject site, Variation 4 of the Development Plan (October 2017) refers. I am satisfied that all the criteria necessary for a site to be placed on the register have been met, section 5(1)(a) as follows:

*(i) the site is situated in an area in which there is a need for housing,*

*(ii) the site is suitable for the provision of housing, and*

*(iii) the site, or the majority of the site is—*

*(I) vacant or idle, or*

*(II) being used for a purpose that does not consist solely or primarily of the provision of housing or the development of the site for the purpose of such provision, provided that the most recent purchase of the site occurred—*

*(A) after it became residential land, and*

*(B) before, on or after the commencement of section 63 of the Planning and Development (Amendment) Act 2018.]*

8.3.4. 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

8.3.5. The appellant has set out a long and complicated argument with regard to the ownership of the site in question. Ultimately, they conclude that the site was not in single ownership, but was rather a partnership at the time the site was placed on the register, during which the appellant was seeking single title and that this would occur in late 2020. A Deed of Transfer (from Patrick Manning to Tom Corr) submitted with the appeal shows that this occurred in December 2020. Tom Corr now advances the case that as ownership changed in 2020, in accordance with section 17(2) of the 2015 Act, a zero charge should be levied. The planning authority disagree and state that their own legal advice is contrary to that of Tom Corr's, and section 17 of the 2015 Act is not met. However, none of these matters change the actual use of the site, that remains vacant and no substantial grounds are put forward to disturb this view. I am satisfied that the site remains vacant in accordance with the requirements of the 2015 Act and no new use has been advanced for the site since it was placed on the register in the first place.

8.3.6. 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 2020. The legal matters advanced by the appellant are better dealt with in terms of the levy calculation and I set this out next.

#### 8.4. Levy Calculation

8.4.1. A Notice of Determination of Market Value was issued to Tom Corr on the 22 September 2020 stating that the valuation placed on the site is €185,000. No

evidence from the appellant has been submitted to show that this valuation was appealed to the Valuation Tribunal and in fact they state that no appeal was made due to the imminent timing of a change in ownership.

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 Tom Corr on the 10 May 2021 for the value of €12,950.

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 that occurred in December 2020 and has submitted legal documentation to demonstrate this. The planning authority disagree and take a contrary legal viewpoint, section 17 of the 2015 Act is not met in their eyes. However, though the planning authority state that they sought legal advice on the matter, they have not included said documentation in their submissions to the Board. In the absence of such documentation, I shall come to my own conclusions based upon the contents of the file before me.

8.4.4. 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.*

8.4.5. The planning authority state that it is their view that the owner of the site transferred it to a connected person (section 17(2)(b) refers). The logic goes that the partnership of Patrick Manning and Tom Corr has dissolved, a new single owner exists, however, as a connected person Tom Corr has effectively retained or at least transferred ownership to a connected person, themselves in this instance. The appellant points to the definition of a connected person under section 17(4) of the 2015 Act, where they contend that a connected person in this appeal is not a relative (subsection a), not a trustee (subsection b) or a company partner (subsection c). It would appear to me that the 2015 Act has allowed for partnerships to dissolve and the title of ownership to change as long as the criteria set out for connected persons is not met. It would seem that the appellant's legal contention that the change of ownership is not coloured by section 17(4) and so a zero charge should apply. Without the legal advice provided to the planning authority I am inclined to agree with the appellant's interpretation of the 2015 Act in relation to section 17 and zero charge applicability.

8.4.6. In my view, it would seem that a levy charge of zero should apply to the year 2020 and 2019 (if applicable). In my view this is a calculation issue and not whether a site should be removed from the register. The site remains a vacant site but the levy

charge should be zero because a change of ownership has taken place. This is a way of ensuring that a new owner is not burdened with a charge on the land, which could in turn slow the development of the land for residential development or active use if a regeneration site.

- 8.4.7. 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 (20<sup>th</sup> December 2020) submitted by the new 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) A change in ownership that occurred in December 2020, the amount of the levy has been incorrectly calculated in respect of the site by the planning authority, but the site continued to be a vacant site,

the Board considered that, in accordance with Section 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) and shall retain the entry on the Vacant Sites Register.

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Stephen Rhys Thomas  
Senior Planning Inspector

20 July 2022