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Bord  
Pleanála

## Inspector's Addendum 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>Inspector</b>	Stephen Rhys Thomas.

## 1.0 Preliminary

- 1.1. This report has been prepared pursuant to a S18 Board Direction (reference number BD-011866-23) that seeks an addendum report to be prepared in response to new information received from the planning authority and from the appellant. The Board decided that the file be referred back to the Inspector for an updated report and recommendation having regard to all submissions received.

## 2.0 Further Responses

### 2.1. Summary of Responses

- 2.1.1. All received further responses as they relate to the appeal referred to ABP-310447-21, are summarised below.

### 2.2. The Planning Authority

- 2.2.1. A response was received from Mr John Harte (Solicitor) on behalf of the planning authority, dated 14<sup>th</sup> December 2022. The submission responds to the queries raised in relation to section 5 and section 17 of the Urban Regeneration and Housing Act 2015 (as amended), specifically section 5(2) states:

*“site” means any area of land exceeding 0.05 hectares identified by a planning authority in its functional area but does not include any structure that is a person’s home*

- 2.2.2. And, section 17 states, amongst other things:

*...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.*

- 2.2.3. With the restrictions set out at section 17(2) to 17(7). The planning authority set out that the site in question, 77 Maudlin Street, was owned in the name of Mr Corr and Mr Manning. Mr Manning then transferred his share to Mr Corr, section 17 of the 2015 Act makes no allowance for the transfer of a fraction of an ownership and so Mr Corr retained his ownership and acquired the entire. Mr Corr’s ownership of the site has not changed and there is no provision in section 17 of the 2015 Act to exempt him from the charge.

- 2.3. The Appellant (landowner)
- 2.3.1. Mr Peter Thomson (Planning Consultant) on behalf of Mr Tom Corr has submitted a Solicitor's response dated 15 February 2023, to the information presented by the planning authority and summarised above. Mr Thomson asserts that unfair procedures have been exercised by the planning authority by the production of their legal advice at this late stage. Mr Corr's solicitor on behalf of the appellant is Mr Brian Kiely of Poe Kiely Hogan Lanigan Solicitors and he sets out the full provisions of section 17 of the 2015 Act. Mr Kiely takes a contrary view of the 2015 Act to that taken by Mr Harte for the planning authority and that is; there has been a material change in ownership during the relevant year and such a change of ownership took place between unconnected persons. The conveyance of ownership between Mr Manning and Mr Corr did not take place in order to avoid the charge but to manage debt and third party financial institutions. Mr Manning was represented by a Solicitor based in Carlow and Mr Corr by Poe Kiely Hogan Lanigan Solicitors. Ownership has changed, section 17(1) applies in this instance and the levy payable should be zero for the year concerned.

### 3.0 **Assessment**

#### 3.1. **Introduction**

- 3.1.1. In this, my updated report, I have confined myself to all new matters raised by the appellant and planning authority. The only issue to be dealt with is change of ownership and the applicability of section 17 of the 2015 Act.

#### 3.2. **Change of Ownership**

- 3.2.1. Section 17 of the 2015 Act refers to either death or change of ownership and it is useful to set it out in its entirety, the whole of section 17 is as follows:

*17. (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.*

*(5) A body corporate shall also be deemed to be connected with the owner of a vacant site if it is controlled by that owner.*

*(6) For the purposes of this section, an owner of a vacant site shall be deemed to control a body corporate if, but only if, he is, alone or together with any of the persons referred to in paragraph (a), (b) or (c) of subsection (4), interested in more than one-half of the equity share capital of that body or entitled to exercise or control the exercise of more than one-half of the voting power at any general meeting of that body.*

*(7) In subsection (6) —*

*(a) “equity share capital” has the same meaning as in section 7 of the Companies Act 2014, and*

*(b) references to voting power exercised by a director shall include references to voting power exercised by another body corporate which that director controls.*

- 3.2.2. The solicitors in this case, for the planning authority and the appellant, have given their opinion and interpretation of what section 17 of the 2015 Act means for their respective clients. Both solicitors do not agree with each other. The planning authority maintain their position that a change of ownership has not occurred because Mr Corr has retained though enlarged their share of ownership. The appellant’s position is that there has been a material change of ownership, via conveyance from Mr Manning to Mr Corr and so the levy charge should be zero.
- 3.2.3. As I have set out the entirety of section 17 above, it is useful to work through each relevant subsection as it relates to this case. Firstly, subsection (2)(a) refers to transfer from one company to an associated one, this is not the case in this instance. Transfer of ownership occurred between two people, Mr Manning to Mr Corr. Subsection (2)(b) refers to site transfer between connected persons, close family or someone acting in trust, again this not the case here. Mr Manning and Mr Corr acted as individuals and according to the appellant each had their own solicitors to handle the transfer. Finally, subsection (2)(c) refers to a change in ownership occurring to simply avoid the charge. In this instance the appellant points out that negotiations in relation to debts and financial institutions was the reason for the conveyance and I accept that this is the case and the planning authority do not raise it as an issue at all. The remainder of section 17, that is subsections 17(3) to 17(7) clarify the meanings of terms used in section 17(2). From my understanding of section 17(2) of 2015, the appellant’s case does not fit easily into the exemptions offered.
- 3.2.4. The nub of the matter is what constitutes a change of ownership and the appellant maintains that a material change has occurred and so the charge for the year concerned should be zero. I do not think that this is the case. It is clear that the appeal site was jointly owned by Mr Manning and Mr Corr, on equal terms as it has not been specified otherwise. They owned the entire site in common and enjoyed the

rights and responsibilities of ownership together as one. The appellant's solicitor has not outlined any constraining terms and conditions of ownership, when it was held jointly. In essence, the land was jointly owned by two persons, it is now owned by a single person. Based upon the information available to me, I am of the view that a material change in the pattern of ownership of the lands concerned did indeed take place. The land was once owned by two people it is now owned by one. Mr Corr went from a joint owner with Mr Manning, to become the sole owner, Mr Corr's rights and responsibilities did not change. For instance, the responsibility to pay any levies or charges on the land, such as in this case.

- 3.2.5. The land went from joint ownership to single ownership, and I agree that this is a material change for the land but not for the owner. Mr Corr's responsibilities as owner have not changed from when the land was owned jointly, so this is not a material change in his status as owner. I am satisfied that, within the terms of section 17 of the 2015 Act, the appellant does not meet any of the requirements that shall not apply with reference to a change in ownership. A charge for the year concerned can be levied as none of the criteria for a zero charge can be applied to the owner in this instance.
- 3.2.6. I find that an actual change in ownership as defined by the 2015 Act did not occur and based upon the legal advice received by the Board from the planning authority I am satisfied that a charge can be levied. As outlined in my previous report (section 8.3.5 refers) I am satisfied that the site remains a vacant site within the terms of the 2015 Act and with reference to section 8.4 of my previous report that the levy calculation is correct and given the new information received should be charged.

### 3.3. **Other Matters**

- 3.3.1. The appellant's agent has made the assertion that new information has been submitted by the planning authority and that this does not follow fair procedure. I note that the Board decided to defer this case until the submission of additional material from the planning authority, namely information with reference to section 17(2)(b) of the 2015 Act. This information was submitted to the Board, who met again and decided that the information should be circulated to the appellant. The appellant availed of the opportunity to respond to the planning authority's submission, and I can see that the process afforded by section 131 and 132 of the

Planning and Development Act 2000 (as amended) has been correctly followed. All parties to the appeal have had the opportunity to interact with the process and I am satisfied that sufficient material is now on the file to allow a decision to be made by the Board.

#### **4.0 Recommendation**

4.1. 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 4<sup>th</sup> June 2021, the date on which the appeal was made. In accordance with Section 18(4) of the Urban Regeneration and Housing Act 2015 (as amended), the Board confirm that the amount of the levy has been correctly calculated in respect of the vacant site. The demand for payment of the vacant site levy under Section 15 of the Urban Regeneration and Housing Act 2015 is, therefore, confirmed.

#### **5.0 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 further submissions received by the Board from the planning authority and the appellant on foot of section 132 and 131 of the Planning and Development Act 2000 (as amended) with reference to change of ownership,
- (d) The report and addendum report of the Planning Inspector,
- (e) 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> 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

04 April 2023