



An  
Bord  
Pleanála

## Inspector's Report ABP-310449-21

---

<b>Type of Appeal</b>	Appeal against a Section 18 Demand for Payment.
<b>Location</b>	Granges Road, Kilkenny.
<b>Planning Authority</b>	Kilkenny County Council.
<b>Planning Authority VSL Reg. Ref.</b>	VSR20-8.
<b>Site Owner</b>	Marrowbond Ltd.
<b>Planning Authority Decision</b>	Charge Levy.
<b>Date of Site Visit</b>	23 <sup>rd</sup> August 2022.
<b>Inspector</b>	Stephen J. O'Sullivan.

## 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 €43,750 for vacant site lands at Granges Road, Kilkenny, identified as VSR 20-8. The notice was issued to Niall and Angela Browne, Marrowbond Ltd. and dated 10 May 2021. Angela Brown, Marrowbond Ltd has appealed the Demand for Payment Notice issued pursuant to Section 15 of the Urban Regeneration and Housing Act.

## 2.0 Site Location and Description

- 2.1. The site is on the western side of Kilkenny City. It has an area of c1.2ha. Its eastern boundary is along the Granges Road, which is a main road, opposite a school. Its southern boundary adjoins the curtilages of houses in a suburban housing estate. The land to the north is occupied by a detached house known as Ayrfield. The adjoining lands to the west are undeveloped.

## 3.0 Statutory Context

### 3.1. Urban Regeneration and Housing Act 2015 (as amended).

- 3.1.1. The site was entered onto the register after a notice was issued on 21<sup>st</sup> November 2021 under Section 7(1) of the Act stating that 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 5(2) of the Act states

*In this section—*

*“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;*

*“home”, in relation to a person, means a dwelling in which the person ordinarily resides (notwithstanding any periods during which the dwelling is vacant) and*

*includes any garden or portion of ground attached to and usually occupied with the dwelling or otherwise required for the amenity or convenience of the dwelling.*

3.1.3. 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 were zoned as “Phase 1 Residential”.

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. Volume 2 of the plan refers to the city. The site is zoned New Residential on Figure CS4 Kilkenny City Zoning map.

#### **5.0 Planning History**

5.1. Reg. Ref. 19/546 – In June the council refused permission for a development of 73 homes on a site of 3.12ha that includes the current site. The reasons for refusal stated that the proposed density of 23 dph would be insufficient to efficiently use serviceable land in close proximity to the services in the city; and referred to the loss of 15 trees that contribute to the character, amenity and biodiversity of the area.

5.2. ABP-311798-21, Reg. Ref. 21/252 – An appeal was made to the board in October 2021 against a decision by the council to grant permission for a development of 75 homes on a site of c3ha that includes the current site.

- 5.3. ABP-310511-21, Reg. Ref. VSR20-13 – there is an appeal before the board against a notice demanding payment of a levy in respect of an adjacent site with the same owners as the site to which this report refers

## **6.0 Planning Authority Decision**

### **6.1. Planning Authority Notices**

- 6.1.1. Kilkenny County Council issued a notice on 21<sup>st</sup> November 2019 under section 7(1) of the act of its intention to enter the site on the register of vacant sites. It stated that the site is zoned to accommodate residential development, is situated in an area where there is a need for housing, is suitable for the provision of housing, and the site or the majority of it is vacant or idle. The notice was addressed to Niall and Angela Browne, Marrowbond Ltd., Ayrfield House.
- 6.1.2. The council entered the site on the register of vacant sites on 31<sup>st</sup> December 2019 under Ref. No. VSR20-08, and issued a notice under section 7(3) of that entry to Niall and Angela Browne, Marrowbond Ltd., Ayrfield House.
- 6.1.3. A Notice of Determination of Market Value under section 12(4) of the act was sent to Niall and Angela Browne on 22 September 2020 stating that the valuation placed on the site is €625,000 with instructions to make an appeal to the Valuations Tribunal.
- 6.1.4. The council sent a demand for payment under section 15 of the act on 10<sup>th</sup> May 2021. The amount sought is €43,750, calculated as 7% of the site's valuation of €875,000. The notice of the demand was addressed to Niall and Angela Browne, Marrowbond Ltd., Ayrfield House. The accompanying invoice setting out the amount demanded identifies the invoicee as Niall and Angela Brown, Airfield House. This demand is the subject of the current appeal.

## **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 had been placed on the Register. The grounds of the appeal can be summarised as follows:

- The notices of the council’s proposal to enter the site on the register were not sent to the correct address, which is why the entry was not appealed. The notice of the demand for payment was not sent to the owner of the site, which is Marrowbond Ltd., but was addressed to Niall and Angela Brown. Also “Browne” was misspelt on the invoice.
- Since the owners became aware of the entry they have made diligent efforts to proceed with the development of the site and have co-operated with the council in this regard. They have made two applications for permission to develop the site for housing. The first application was made in August 2019 under Reg. Ref. No. 19/546 was refused by the council in June 2020. The second was made in April 2021 under Reg. Ref. No. 21/252. This required ongoing works to investigate tree roots after a request for further information from the council. The owners do not consider that the land has been idle at any time.
- The site includes lands within the curtilage of a house and so is not a vacant site. An annotated aerial photo is submitted to illustrate this issue.
- The owners’ agent wrote to the council in October 2020 setting out why the activation of the levy should be postponed, a copy of which is included with the appeal. It states that the original entry was not appealed as there was confusion that the notice referred to a new entry of the site on the register for 2020 as it was contemporaneous with the appeal against the notice for VSR19-7 and the application for planning permission 19/546; the boundary of the site extends in the curtilage of the private house at Ayrfield owned by Niall and Angela Browne; and that works are being undertaken on the site to facilitate development by investigating tree root locations.

## **7.2. Planning Authority Response**

7.2.1. The council’s response can be summarised as follows-

- The site is designated as residential land and section 5(1)(a) of the act applies. The council refused the application for permission for 73 houses on the site under 19/546 due to the inadequate density proposed for serviceable land and the loss of 15 mature trees. The physical condition of the land does affect its status as residential land. It therefore qualifies under the terms of the act.

- The notices that were issued to the owners in November and December 2021 under sections 7(1) and 7(3) of the act were accompanied by a map and included information on the owner's opportunity to appeal those notices to the board. This right of appeal was not exercised. The area of land that is being disputed is approximately 120m<sup>2</sup> out of a site area of 1.2ha. This is not considered material in the context of the overall implementation of the vacant site levy as a site activation mechanism.
- The section 15 notice that is the subject of this appeal comprised a letter and an invoice. The letter was sent to Niall and Angela Browne, Marrowbond Ltd., Ayrfield House, as were the other notices in respect of this land issued under the act. The invoice was issued to Niall and Angela Brown. The records at the Companies Registration Office indicate that Angela Browne and Niall Browne are directors of Marrowbond Ltd. As such they would be considered connected persons under the act.
- The notice of the valuation of the site under section 12(4) was sent to the owners of the site in September 2020. The valuation could have been appealed to the Valuation Tribunal within 28 days of that notice. The notice or any other notices relating to the site could not be set aside on the basis of a letter to the council within that period.

### **7.3. Further Response**

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

- The site is part of land acquired by Ms Browne's grandfather in 1941 which includes the family home and other land that has been grazed since then.
- The site was not vacant or idle on 1<sup>st</sup> January 2021 as residential development was being actively pursued upon it.
- Lot 20-8 includes part of the private residence of Niall and Angela Browne, who are not the owners of the remainder of the site. This is not permitted under section 5(2) of the act. The notice should be withdrawn for being ambiguous and lacking clarity. The planning authority cannot tax a company for land that it does not own. A

levy has been issued for an inaccurate parcel of land and should be removed from the register.

- The submission expands on the work involved in the submission of the planning applications and the consultations with the council upon them, and the owner's disappointment at the refusal of permission under 19/546. The consideration of the current application has been delayed due to the Covid pandemic. These extenuating circumstances should be taken into account in the issuing of demands for payments.
- The notices are not properly addressed with references Niall and Angela Browne and Marrowbond Ltd. The Section 15 demand was issued to Niall and Angela Brown and not to the registered owner of the land and so it invalid.
- Further references are made to the letter sent to the council by the owner's agent in October 2020.

## **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.

### **8.2. Whether the site is no longer a vacant site**

8.2.1. C120m<sup>2</sup> of the land in the curtilage of the dwellinghouse at Ayrfield to the north has been included in the boundaries of the site. This amount to c1% of the overall site. The other 99% of the site is not in use for housing, nor was it on the 1<sup>st</sup> January 2020, the 10<sup>th</sup> May 2021 or the 4<sup>th</sup> June 2021. Neither was it is in use by the carrying out of substantial works for the provision of housing. The tree survey works to which the appeal refers would not constitute a substantial or significant use in this regard. It is therefore concluded that the majority of site was vacant or idle on the 1<sup>st</sup> January 2020, at the time the notice under section 15 was issued and at the time the appeal against that notice was made.

8.2.2. The site was zoned for housing under the development plan which applied to the site on 1<sup>st</sup> January 2020. It would be reasonable to assume that the area of the site situated within the curtilage of the house at Ayrfield would not be included in any residential development of the site. However this is a small and marginal piece of the overall site. Its exclusion would not impede the development of the site for a significant amount of new housing. It is therefore concluded that the site was suitable for the provision of housing on 1<sup>st</sup> January 2020 and was in an area where there is a need for housing. This conclusion is consistent with the reasons why the council refused permission for the development of housing on the site under Reg. Ref. 19/546 which referred to particular characteristics of the proposed development and did not indicate that the site was unsuitable for the provision of housing. This situation had not altered by the time the current notice was issued or the current appeal against it was made.

8.2.3. As the majority of the site was vacant, was suitable for the provision of housing and was in an area in need of housing on 1<sup>st</sup> January 2020, and on the date when the section 15 notice was issued and on the date when the current appeal was made, I am satisfied that it was a vacant site and so is liable for the vacant site levy for 2020.

### 8.3. **Whether the levy has been correctly calculated**

8.3.1. A Notice of Determination of Market Value of €625,000 was issued under section 12(4) of the act in respect of the site 22<sup>nd</sup> September 2021. This valuation was not appealed. The notice under appeal seeks payment of a levy for 2020 of €43,750, which is 7% of the valuation. There are no grounds on which to conclude that the levy was not correctly calculated, therefore.

### 8.4. **Other issues**

8.4.1. The notices issued in respect of the site issued under section 7(1), 7(3), 12(4) and 15 of the act were issued to Niall and Angela Browne, Marrowbond Ltd, Ayrfield House. I concur with the position of the planning authority that the notices were correctly addressed to the owner of the site and do not agree with the grounds of the appeal in this regard. The reference to "Niall and Angela Brown, Airfield House" on the invoice accompanying the letter setting out the section 15 notice is wrong. However given that that Niall and Angela Browne are connected to the owner of the



site and share an address, and that the letter setting out the section 15 notice was properly addressed, there is no realistic or reasonable ground on which to conclude that the inaccuracy in the invoice could result in any failure to properly communicate the content of the notice that would justify setting it aside.

- 8.4.2. The inclusion of part of the curtilage of the house at Ayrfield within the vacant site is clearly set out in the annotated aerial photograph submitted with the appeal. This inclusion is unreasonable and appears to be an error on the part of the planning authority, as is the exclusion from the site of other adjoining land that is not in use. The imprecise approach to the delineation of the boundaries of the site is unfortunate. However the board does not have the power to amend an entry of the register on foot of an appeal against a demand for payment. The question then arises as to whether the error in the mapping would render the section 15 notice invalid, as argued by the appellant. I do not consider that it does. The piece of land that is shown within the boundaries of the vacant site but which is actually behind the wall that defines the curtilage of the house at Ayrfield under should not be part of the vacant site under the definition set out at section 5(2) of the act, as stated by the applicant. However it would be reasonable to assume that it is therefore excluded from the vacant site by the operation of the act with no further action is required by the council or the board to achieve this outcome. Any impact that this would have on the valuation of the site would have been a matter for an appeal of the section 12 notice to the Valuation Tribunal. Conversely it would appear disproportionate and unreasonable to set aside a demand for payment made in accordance with the provisions of the act when the owner of the site could have objected to the entry on the register on foot of previous notices served under section 7(1) and 7(3) of the act on the grounds of the imprecise mapping, but did not, and given the coincidences between the address of the company that owns the site, the names and addresses of its directors, and the address of the neighbouring house on the records registered with the CRO.

## 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> 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 should confirm that the amount of the levy has been correctly calculated in respect of the vacant site and that, the amount of vacant site levy to be charged in respect of the site for the year 2020 shall be €43,750 (forty-three thousand, seven hundred and fifty euro). The demand for payment of the vacant site levy under Section 15 of the Urban Regeneration and Housing Act 2015 should, therefore, be 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, and
- (c) The report of the Planning Inspector,
- (d) The absence of grounds to support a conclusion that the site was no longer a vacant site within the meaning of the Urban Regeneration and Housing Act, 2015, as amended, on the 1<sup>st</sup> day of January 2020 or that the amount of the levy had been incorrectly calculated in respect of the site by the planning authority notwithstanding errors in the mapping of the site's boundaries,
- (e) The fact that 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. The Board considered that it is appropriate that a notice be issued to the planning authority who shall confirm the demand for payment.

---

Stephen O'Sullivan  
Planning Inspector

24 August 2022