



An
Bord
Pleanála

Inspector's Report ABP-310472-21

Type of Appeal	Section 18 Demand for Payment.
Location	Lands measuring 0.48 ha located at former St Ernan's School Site, Rathnew, Co. Wicklow.
Planning Authority	Wicklow County Council.
Planning Authority VSL Reg. Ref.	VS/RN/02.
Site Owner	Knoxpark Developments Limited.
Planning Authority Decision	Demand Levy.
Date of Site Visit	07 September 2022.
Inspector	Stephen Rhys Thomas.

Contents

1.0 Introduction.....	3
2.0 Site Location and Description	3
3.0 Statutory Context	3
4.0 Development Plan Policy	4
5.0 Planning History.....	5
6.0 Planning Authority Decision	5
7.0 The Appeal	7
8.0 Assessment.....	8
9.0 Recommendation.....	12
10.0 Reasons and Considerations	12

1.0 Introduction

- 1.1. This appeal refers to a Section 15 Notice of Demand for Payment of Vacant Site Levy issued by Wicklow County Council, stating their demand for a vacant site levy for the year 2020 amounting to €50,400 for a vacant site at Rathnew, Co. Wicklow, and identified as VS/RN/02. The notice was issued to Knoxpark Developments Limited (and others) and dated 14 May 2021. The owner Knoxpark Developments 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 Wicklow County Council on the 10 December 2020. The value of the subject site is stated to be €720,000, it is stated that this valuation was appealed to the Valuation Tribunal.
- 1.3. New owners of the site were advised of a valuation pertaining to the site was issued by Wicklow County Council on the 10 December 2020 by correspondence dated 8 January 2021. The value of the subject site is stated to be €720,000.
- 1.4. On the 26 February 2019, the Notice of Entry on the Vacant Sites Register was issued to St Laurence O'Toole Diocesan Trust. This section 7(3) notice was not appealed to the Board. A Notice of Proposed Entry on the Vacant Sites Register was issued to St Laurence O'Toole Diocesan Trust on the 26 January 2019.

2.0 Site Location and Description

- 2.1. The site is located at the centre of Rathnew Village in north County Wicklow. The R750 regional road passes to the north of the site and carries a significant amount of local traffic. The site is also bounded by public roads to the east and south, making the lands highly visible from the public realm. The site sits slightly higher than the public road and is generally level across its extent. The site is currently a working construction site, with a number of dwellings nearing completion and others with foundations poured and scaffolding erected.

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)(b) of the Act. A section 7(3) Notice was issued 1 December 2018 and the site was subsequently entered onto the register on that date.

3.1.2. Section 13 of the Act sets out any appeal to the Valuation Tribunal and in the case of this appeal, section 13(8) has been highlighted by the appellant, as follows:

(8) The planning authority shall not make a demand for payment of vacant site levy under section 15 —

(a) before the expiry of the period during which an appeal may be brought under that subsection, and

(b) where an appeal is brought under subsection (1), before the appeal is finally determined or withdrawn.

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. Wicklow County Development Plan 2016-2022

The current County Development Plan refers to Urban Regeneration and Housing in Chapter 4 of the Plan and specifically at Policy HD19 where it states:

In many settlements in the County, there are sites and areas in need of development and renewal, in order to prevent:

a. adverse effects on existing amenities in such areas, in particular as a result of the ruinous or neglected condition of any land,

- b. urban blight and decay,
- c. anti-social behaviour, or
- d. a shortage of habitable houses or of land suitable for residential use or a mixture of residential and other uses.

It is an objective of this plan to encourage and facilitate the appropriate development of such sites /lands and all available tools and mechanisms, including the Vacant Site levy, may be utilised to stimulate such development.

In this regard, it is considered that all lands zoned 'Town Centre' in this plan (this refers to Level 5 settlements) as well as the following zones in larger towns (with standalone plans) may include sites that are in need of renewal and regeneration, and these areas will be examined in detail to determine if there are sites where the Vacant Site Levy should be applied.

In terms of Wicklow Town and Rathnew the following zones are included – TC, VC, PT, MU.

4.2. Wicklow Town – Rathnew Development Plan 2013-2019

- 4.2.1. The site is zoned village centre under objective VC - To preserve, improve and provide for village centre uses.

5.0 Planning History

5.1. Subject site

Ref. 20502 Permission for the demolition of school building and construction of 18 houses.

6.0 Planning Authority Decision

6.1. Planning Authority Reports

- 6.1.1. Planning Report Date 25 January 2019 – site visit 24 January 2019, Vacant Site Levy Investigations in relation to the site which is presented in tabular format is summarised as follows:

- The site is considered to qualify as regeneration site, in accordance with section 5(1)(b) of the 2015 Act.
- Site first investigated in July 2017 and was vacant. Site is highly visible and impacts on the character of the area. The site is in a neglected condition.
- No indication of any flood risk.
- Antisocial behaviour was/is taking place, broken windows, graffiti and fires.

The Report is accompanied by photographs and a layout map.

- 6.1.2. Planning Report Date 26 February 2019 – After the receipt of a submission regarding a protracted process of change of ownership and an admission that the site is vacant, decision to place the site on the register was made.
- 6.1.3. Planning Report Date 21 April 2021 – site inspection 14 April 2021, the site remains vacant, issue demand for levy.

6.2. Planning Authority Notices

All relevant planning authority notices are listed as follows:

- 6.2.1. Section 15 Notice of Demand for Payment of Vacant Site Levy issued by Wicklow County Council, stating their demand for a vacant site levy for the year 2020 amounting to €50,400 for a vacant site at Rathnew, Co. Wicklow, and identified as VS/RN/02. The notice was issued to Knoxpark Developments Limited (and others) and dated 14 May 2021.
- 6.2.2. A valuation pertaining to the site was issued by Wicklow County Council on the 10 December 2020. The value of the subject site is stated to be €720,000.
- 6.2.3. New owners of the site were advised of a valuation pertaining to the site issued by Wicklow County Council on the 10 December 2020 by correspondence dated 8 January 2021. The value of the subject site is stated to be €720,000. An appeal to the Valuation Tribunal has been made.
- 6.2.4. On the 26 February 2019, the Notice of Entry on the Vacant Sites Register was issued to St Laurence O'Toole Diocesan Trust. This section 7(3) notice was not appealed to the Board.
- 6.2.5. A Notice of Proposed Entry on the Vacant Sites Register was issued to St Laurence O'Toole Diocesan Trust on the 26 January 2019.

7.0 The Appeal

7.1. Grounds of Appeal

The landowner has submitted an appeal to the Board and can be summarised as follows:

- The valuation set for the site (€720,000) was much higher than the actual purchase price of €575,000.
- The site has moved from idle to development status.
- Under section 13(1) of the 2015, the owner appealed the valuation to the Tribunal, dated 3 February 2021, valuation tribunal ref number VS21/6/0002.
- Under section 13(8) of the 2015, the PA should wait until the conclusion of the appeal to the tribunal before the issuance of a section 15 Demand. This did not happen, the demand notice issued 21 May 2021, the updated proposal of the Valuation Tribunal did not issue until 3 June 2021.
- Survey works have continued on the site prior to the production of detailed drawings leading to a planning application.

Therefore, the site was no longer vacant, because extensive survey works had continued on site and that the calculation of the levy charge was incorrectly based on a false valuation.

The appeal is accompanied by various correspondence including that to the PA and the Valuation Tribunal. The results of site surveys are included that demonstrate that asbestos is on site and will require careful removal.

7.2. Planning Authority Response

7.2.1. The planning authority have a submitted a detailed response to the appeal, dated 30 June 2021, and can be summarised as follows:

- The site had been sold in July 2019.
- The site was still vacant on the 21 April 2021.
- PA only became aware the valuation had been appealed on the 19 May 2021. According to section 13(8) of the 2015 Act, the demand notice was issued incorrectly. The Demand Notice will be withdrawn until such time that the

appeal before the Valuation Tribunal is complete. The site should stay on the register.

7.2.2. By correspondence dated 11 August 2021, the PA state that the Demand Notice has formally been withdrawn. The site remains vacant, but due to change in ownership the first charge should issue in 2021.

7.3. **Further Response**

The appellant has submitted a response as follows:

- The PA have contravened section 13(8) of the 2015 Act and though the demand has been withdrawn, there should be nothing charged for 2020 at all, because of such an administrative malpractice. Criticisms are levelled at the PA's approach to section 20 of the 2015 Act and the methodology employed by the Council's valuer in assessing the value of the site in question.
- The site has infrastructural deficiencies, and these are detailed in the submitted report, mainly to do with surface water services.
- Initial demolition works have begun on site, February 2021.
- Covid restrictions are cited as delays to further works on site.

8.0 **Assessment**

8.1. **Introduction**

8.1.1. The appeal on hand 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.

The appellant has pointed out and the planning authority have conceded that the Demand Notice was issued prior to the completion of the deliberations of the Valuation Tribunal on the value of the site. In this regard the planning authority have withdrawn their Notice dated 14 May 2021. The appellant has raised this matter and others and 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) or (b) 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 1st of January in the year concerned, in this case 2020.
- 8.2.2. For the purposes of this assessment, I will consider both scenarios.

8.3. Is it a Vacant Site?

- 8.3.1. The appellant has stated that they were unaware that the site had been placed on the register prior to their taking ownership. Admittedly this is not a concern of the Board, but the appellant points out that they did not have the chance to contest the placement of the site on the register.
- 8.3.2. Nevertheless, a Section 7(3) Notice of Entry on the Vacant Sites Register was issued on the 26 January 2019 as a regeneration site under section 5(1)(b) of the 2015 Act, this was not appealed to the Board. The site was subsequently placed on the register, and I can see from the publicly available register online, that this is the only vacant site in Rathnew. The appellant is correct that their inability to determine if the site was burdened with placement on the Vacant Site Register prior to purchase is not a concern for the Board, it is not. Furthermore, the period to appeal the placement of the site on the register has long since past and in fact as new owners, burdens and any charges passes to them. In this regard, I note that given the change in ownership the value of the levy demand for 2018 and 2019 was set at zero in accordance with section 17 of the 2015 Act. Neither the planning authority nor the appellant are concerned about this aspect of the appeal.
- 8.3.3. From documentation on the file I can see that the previous owners of the site concede that the site was vacant for the period concerned and that antisocial behaviour had been taking place on the site. Given that the site was initially placed on the register in 2019 and no appeal was lodged with the Board, I see no merit in re-examining if the site should have been placed in the register in the first place. The reports of the planning authority confirm these circumstances. It has been admitted

by the previous owners that the site was vacant and so the site was placed on the register, no further action on the part of the Board is required.

- 8.3.4. In terms of being a vacant site, the appellant's main contention is that the site is not vacant or idle because a number of surveys have taken place to establish any constraints prior to development and that some demolition works have begun. I examine these issues in the following section of my report.

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

- 8.3.5. The owner states that survey work was carried out on site to establish the extent of any constraints, such as the existence of asbestos. A completed survey prepared by Celtic Asbestos Consultancy Ltd dated March 2021, has been lodged with the appeal. The survey work carried out is dated as February 2021. In the first instance I do not consider that routine survey work to establish the constraints of a site should be considered as actual development leading to the improvement of the amenity of the area or to reverse the adverse effects on the character of the area that the site is having. The appellant has pointed out that some demolition works have occurred on site and that these occurred during February 2021, before the appeal was lodged with the Board. However, again and in the context of section 5(1)(b) of the 2015 Act, the purpose of regeneration is to improve public amenities and improve the character of the area, demolition works seldom achieve this objective. However, on the date of my site visit (September 2022), I observed that the site is an active construction site, with a number of almost complete houses and the foundations of others poured.
- 8.3.6. Based upon the scale of development already completed on the site and the contention by the appellant that demolition works that involved the careful removal of asbestos occurred before the appeal was made. It is highly likely that throughout 2021 construction works advanced apace on site. I am satisfied that for the period concerned, 2020 and the date at which the appeal was made, the site moved from a vacant site for the purposes of the 2015 Act to an active construction site. However, the Board should note that the planning authority have withdrawn the demand notice and I deal with this aspect of the appeal in the final section of my report.

8.4. Levy Calculation

- 8.4.1. New owners of the lands were advised of a valuation pertaining to the site dated 10 December 2020 by Wicklow County Council by correspondence dated 8 January

2021. The value of the subject site was stated to be €720,000. Subsequently, the new owner elected to appeal this valuation to the Valuation Tribunal because they purchased the site at €575,000. According to the documentation on file, it appears that the Valuation Tribunal have accepted the appeal, but no ruling on the value of the site has been made.

- 8.4.2. The appellant claims that in the first instance the value of the levy is based on a site value that has not yet been settled and in addition, the planning authority acted hastily by issuing a Demand Notice. The appellant highlights that the planning authority acted incorrectly by issuing the demand notice before the Valuation Tribunal had finished its work, section 13(8) of the Act refers:

(8) The planning authority shall not make a demand for payment of vacant site levy under section 15 —

(a) before the expiry of the period during which an appeal may be brought under that subsection, and

(b) where an appeal is brought under subsection (1), before the appeal is finally determined or withdrawn.

- 8.4.3. The Act is clear, a demand notice shall not issue until such time as an appeal before the Valuation Tribunal is either determined or withdrawn. I have no information before me to categorically state that either occurrence has transpired. As far as I can tell the appeal before the tribunal remains to be determined or withdrawn, as correspondence produced by the appellant shows that deliberations continue at the Tribunal on this case, dated 3 June 2021.

- 8.4.4. I am not satisfied that a levy charge can be accurately calculated, given that the value of the vacant site has not yet been determined by the Valuation Tribunal. I therefore, find that the Demand Notice issued under section 15 of the 2015 Act incorrectly states the levy due and should be cancelled

8.5. **Other Matters**

- 8.5.1. The appellant has raised a number of issues that are not directly applicable to a section 18 appeal. Those matters that I consider to be relevant are addressed in the preceding sections. Other issues that pertain to the valuation of the site and how it

has been done are matters that should be taken up with the Valuation Tribunal and it appears that this has taken place.

- 8.5.2. The appellant argues that the planning authority should never have issued a Demand Notice in the first place, the planning authority agree and have withdrawn the demand for 2020. The 2015 Act is clear on the matter and a demand notice should not issue until the value of the site has been fairly determined, section 13 of the 2015 Act refers. In this regard, I note that the planning authority have formally withdrawn the demand notice for 2020 and presumably await the outcome of the Valuation Tribunal's determination. When and if a new Demand Notice is issued by the planning authority, on site factors may have changed and if so, will probably form the basis of a fresh appeal.

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 not a vacant site on 9 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 because the Valuation Tribunal have not yet made a determination. 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 and the correspondence dated 30 June 2021 that declares the Demand Notice withdrawn,
- (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 January 2020, but that construction activity had commenced by the date the appeal was made, and that the amount of the levy has been incorrectly calculated in respect of the site by the planning authority because a site value is yet to be determined by the Valuation Tribunal, 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, cancelled.

Stephen Rhys Thomas
Senior Planning Inspector

September 2022