



An  
Bord  
Pleanála

## Inspector's Report ABP-310475-21

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<b>Type of Appeal</b>	Appeal against a Section 18 Demand for Payment.
<b>Location</b>	Land measuring 0.6 ha at Castle Street (former Heiton Buckley site), Bray, Co. Wicklow.
<b>Planning Authority</b>	Wicklow County Council.
<b>Planning Authority VSL Reg. Ref.</b>	VS/B/04.
<b>Site Owner</b>	Silverbow Limited.
<b>Planning Authority Decision</b>	Charge Levy.
<b>Date of Site Visit</b>	23 December 2021.
<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 Wicklow County Council, stating their demand for a vacant site levy for the year 2020 amounting to €189,000 for a vacant site at Castle Street (former Heiton Buckley site), Bray, Co. Wicklow, and identified as VS/B/04. The notice was issued to Silverbow Limited and dated 14 May 2021. The owner Silverbow 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 28 August 2018. The value of the subject site is stated to be €3,500,000 and this was corrected on appeal to €2,700,000.
- 1.3. A Notice of Proposed Entry on the Vacant Sites Register was issued to Beralt Developments Limited on the 20 June 2017. On the 1 December 2017, the Notice of Entry on the Vacant Sites Register was issued to Beralt Developments Limited. This section 7(3) notice was appealed to the Board.

## 2.0 Site Location and Description

- 2.1. The site comprises a series of warehouse structures both within and addressing the street. The site also adjoins a cul-de-sac at Dwyer Park. The site is bounded by a high palisade fence and high concrete block walls. The site is adjoined by a range of buildings and uses from commercial to residential uses. The condition of the site is characterised by neglected buildings in varying states of disrepair. No apparent uses were being carried out and there were significant accumulations of litter on parts of 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)(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 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 Bray and Environs, the following zones are included: TC, SF, GTH.

#### **4.2. Bray Town Development Plan 2011-2017**

The site is zoned TC, Town Centre with a stated objective 'to provide for the development and improvement of appropriate town centre uses including retail, commercial, office and civic use, and to provide for 'Living Over the Shop' (LOTS) Residential Accommodation'.

Section 4.4.13 refers to Opportunity Sites with the site is identified in Table 4.1 as Site No. 3 with acceptable use identified as mixed-use development comprising commercial units on ground floor and office/residential units on upper floors.

#### **4.3. Bray Municipal District Local Area Plan 2018 – 2024**

The site is zoned TC, Town Centre with a stated objective – 'To provide for the development and improvement of appropriate town centre uses including retail, commercial, office and civic use, and to provide for 'Living Over the Shop' residential accommodation, or other ancillary residential accommodation.'

### **5.0 Planning History**

#### **5.1. Subject site**

Ref. 14/2147 (PL27.245361) – permission refused by WCC and ABP on appeal for a single storey discount foodstore principally for the under-utilisation of an opportunity site.

#### **5.2. VSL History:**

ABP-300550-18 - Vacant Site Levy - Appeal S.9 - Notice Confirmed 6 June 2018.

### **6.0 Planning Authority Decision**

#### **6.1. Planning Authority Reports**

- 6.1.1. Planning Report Date 21 April 2021 – New owners identified as Silverbow Limited. Site inspection carried out on the 14 April 2021, fire damage and the poor condition

of buildings on site impact upon the character of the area. The condition of all buildings is revisited with little change or signs of maintenance. A large amount of litter has collected on the site, antisocial behaviour is taking place. Despite indications of ownership change, the site remains on the register. Transfer of ownership may have occurred in 2019, but no evidence to show this, charge levy for 2020.

6.1.2. Initial Planning Report - A report prepared by the Planning Authority, entitled 'Phase 1 - Vacant Site Levy Investigations' in relation to the site which is presented in tabular format is summarised as follows:

- Site is made up of a number of disused industrial/warehouse type units and a large concrete yard.
- Site is noted as being zoned town centre, with the type referred to as regeneration;
- It is stated that the site has been vacant for 12 months and does not form part of a persons home nor is it subject to a derelict sites levy;
- In relation to adverse effects on existing amenities it is stated: Site is located on a key commercial and shopping street in the town centre and at a prominent and highly visible location on the main access route into the town from the north. The site is boarded up and neglected. Its condition and vacancy degrades the overall appearance and vitality of the area and is likely to attract anti-social behaviour.

The documentation is accompanied by photographs, a valuation report and an extract from the VSR. In addition, all documentation with reference to earlier demand notices and the valuation appeal are included.

## 6.2. **Planning Authority Notices**

All relevant planning authority notices are listed as follows:

6.2.1. Wicklow County Council advised the site owner (Silverbow Limited) that the subject site (Planning Authority site ref. VS/B/04) is now liable for a payment of the levy for 2020 of €189,000 Payment terms and methods are outlined, dated 14 May 2021.

- 6.2.2. Wicklow County Council advised the site owner (Silverbow Limited) that the subject site (Planning Authority site ref. VS/B/04) is now liable for a payment of the levy for 2019 of €189,000 Payment terms and methods are outlined, dated 21 January 2020.
- 6.2.3. A Notice under Section 21(2) of the 2015 Act was issued to Beralt Developments Limited, dated 7 October 2019, accompanied by a Certificate of Discharge for payment of €81,000 in respect of levy charge for 2018.
- 6.2.4. Wicklow County Council advised the site owner (Beralt Developments Limited) that the subject site (Planning Authority site ref. VS/B/04) is now liable for a payment of the levy for 2018 of €81,000 Payment terms and methods are outlined, dated 10 June 2019.
- 6.2.5. A Notice under Section 13(6) of the 2015 Act was issued to Beralt Developments Limited, market value amended from €3,500,000 to €2,700,000, dated 10 June 2019.
- 6.2.6. A Section 11 Notice was issued on the 30 November 2018 to Beralt Developments Limited notifying them that a levy charge for 2018 will issue.
- 6.2.7. A Notice of Determination of Market Value was issued to Beralt Developments Limited on the 28 August 2018 stating that the valuation placed on the site is €3,500,000 and instructions to make an appeal to the Valuations Tribunal.
- 6.2.8. A section 7(3) Notice issued on the 1 December 2017, advising the owner (Beralt Developments Limited) that their site had been placed on the register.
- 6.2.9. A section 7(1) Notice issued on the 20 June 2017, advising the owner (Beralt Developments Limited) that their site had been identified as a vacant site and invited submissions.

## **7.0 The Appeal**

### **7.1 Grounds of Appeal**

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

- Since the Board confirmed that the site was a vacant site, the lands have been rezoned Town Centre in the Bray Municipal District Local Area Plan 2018-2024. A new assessment of the site should take place in order to

determine if the lands are still considered regeneration lands. Town centre zoning seeks to provide for the development and improvement of appropriate town centre uses including retail, commercial, office and civic use, and to provide for 'Living Over the Shop' residential accommodation, or other ancillary residential accommodation. The site is now an opportunity site (OP2), where mixed uses are sought, that include residential uses. The town centre zoning does not refer to regeneration in any of its objectives and Objective HD19 of the County Development is not specific enough in relation to its definitions of residential or regeneration lands. The new LAP does not support the placement of the site on the register in terms of regeneration lands. A precedent case is suggested with similar circumstances – ABP-303442-19.

- The site is not considered to be regeneration lands, however, in terms of section 6(6) of the 2015 Act: the lands/buildings are not ruinous or neglected and this is demonstrated by Valuation Certifications (2020) in order for the local authority to collect rates.
- Antisocial behaviour is not taking pace on the lands, regular inspections by the management team demonstrate this, the existence of graffiti is not accepted as sufficient evidence.
- There has not been a reduction of the number of dwellings/persons living in the area. Census figures show an increase in population for Bray.

The appeal is accompanied by valuation certificates and the demand notice.

## **7.2. Planning Authority Response**

The planning authority have a submitted a detailed response to the appeal and can be summarised as follows:

The provisions concerning the Vacant Site Levy are incorporated in to the County Development Plan 2016-2022, Objective HD19 refers. Lands zoned TC are considered to qualify as 'regeneration lands'. Reference is made to the Inspectors Report regarding the initial section 9 appeal, ABP-300550-18. The new LAP (effective from June 2018) is subservient to the County Development Plan and so the objectives of the primary plan apply. The designation of the lands as an



opportunity site (OP2) in the 2018 Bray MD LAP does not alter the statutory zoning, it is still Town Centre and the CDP applies. The appropriateness of the planning authority approach to VSLs via the wording of the County Development Plan Objective HD19 has been tested and found acceptable, six previous appeal cases are listed.

The rateable value of the site has no connection with the ruinous or neglected condition of the site. The site has not been improved since it was placed on the register, it is still in poor condition and adversely effects the character of the area.

Not all three criteria of section 6(6) are required to met, even if population in Bray has increased, the evidence of litter on site shows that antisocial behaviour is taking place.

### **7.3. Further Response**

The appellant has submitted a response as follows:

Disagreement that objective HD19 of the County Development Plan is fit for purpose and should not be considered by the Board to fulfil the requirements of the 2015 Act with regards to Circular Letter PL7/2016. The Inspector's report on the previous appeal did not accept or reject the suitability of the policy HD19 or that it met the requirements of the 2015 Act.

## 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.

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. A Section 7(3) Notice of Entry on the Vacant Sites Register was issued on the 1 December 2017. Subsequently a Section 9 appeal was made to the Board under appeal reference ABP-300550-18. 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 information submitted, the grounds of appeal and the report of the Inspector, the site could be placed on the register. The owner asserts that since the site was placed on the register the land use zoning has changed to 'Town Centre', Bray MD LAP 2018-2024 refers. The appellant states that the site should be reassessed to ascertain that the lands can still be considered as 'regeneration' for the purposes of the 2015 Act. In addition, the site is designated as an opportunity site and neither the town centre zoning or opportunity site objectives refer to regeneration. Even if the lands were considered as regeneration, the

appellant does not accept that the site is neglected or ruinous, Valuation Certificates demonstrate this, antisocial behaviour is not occurring on site and the population of Bray has increased.

8.3.2. The planning authority state that the County Development is still in force and that Policy HD19 adequately addresses the implementation of the Vacant Site Levy and lands zoned Town Centre fall into the category of regeneration lands irrespective of the new LAP or opportunity site designation. In their view the site still fulfils the criteria for inclusion on the register and the charge to be levied. With respect to the Valuation Certificates, I note that 'vacant' has been entered for the shops/retail element, but I cannot be certain that these certificates relate to the site in question. With respect to the TC zoning, I note that the wording of the zoning objective differs little from the previous LAP to the next. In my mind, policy HD19 of the County Development Plan (CDP) still applies, in particular with regard to the site in question, its TC zoning objectives and the definition of regeneration lands outlined in the CDP.

8.3.3. I am satisfied that no new information has come to the fore since the Section 7(3) Notice was issued and that the matter of vacancy has already been adjudicated on and should not be re-examined. The implementation of the Vacant Site Levy, the use of Policy HD19 of the Wicklow County Development Plan (still in force) has been found acceptable in appeals made to the Board up to now, I do not intend to revisit the decision to place the site on the register in this instance.

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

8.3.4. The owner has not advanced any actual use for the site for the year concerned 2020. The appellant states that regular visits to the site have occurred to ensure that no antisocial behaviour is taking place. From the information on file and my own observations of the site I can see that the condition of the site has not changed since first placed on the site. The buildings are still in a poor and neglected state and there are accumulations of litter on the site. In my view the condition of the site still represents an adverse impact on the character of the area. No actual use as been advanced for the site and the criteria under section 6(6) of the 2015 Act, still apply, the site is still a vacant site.

8.3.5. Based upon the lack of any evidence to show that the site was in active use during 2020 or at the time the appeal was made (9 June 2021), I am satisfied that for the

period concerned, 2020, the site remained a vacant site for the purposes of the 2015 Act and enables a change to be levied.

#### 8.4. Levy Calculation

8.4.1. A Notice of Determination of Market Value was issued to Beralt Developments Limited on the 28 August 2018 stating that the valuation placed on the site is €3,500,000. An appeal was made to the Valuation Tribunal and consequently a Notice under Section 13(6) of the 2015 Act was issued to Beralt Developments Limited, the market value was amended from €3,500,000 to €2,700,000, dated 10 June 2019.

8.4.2. In the case of this appeal, a Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to Silverbow Limited on the 14 May 2021 for the value of €189,000.

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.

#### 8.5. Other Matters

8.5.1. The appellant has not raised any issue with regard to the change of ownership of the site, though, I note that the planning authority reports have. The planning authority note that no formal information has been submitted with regard to a change of ownership. A notice issued in October 2019 for a Certificate of Discharge for payment of €81,000 in respect of levy charge for 2018, was issued to the site owner Beralt Developments Limited. Subsequent notices refer to Silverbow Limited, levy charge for 2019 and 2020 refer. The valuation documentation contained in appendix 1 of the appellant's appeal refer to the 'occupier' as Silverbow Limited. With reference to ownership and section 17 of the 2015 Act, it is stated:

*(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.*

8.5.2. Even though names have changed with respect to the notices issued (from Beralt Developments Limited to Silverbow Limited), I have no other information before me to suggest that a change of ownership has occurred and that a zero charge should apply. It may therefore be the case that some or all of the subsections above could apply. In any case, the levy demand is for the period 2020, a year after a change in the name of notices issued by the planning authority. If a change in ownership has occurred in accordance with section 17 of the 2015 Act, the responsibility for a revised demand notice to issue may rest with the planning authority. I do not see an error in the way the current demand notice was calculated.

## **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 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 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 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

3 March 2022