



An
Bord
Pleanála

Inspector's Report ABP-310511-21

Type of Appeal	Appeal against a Section 18 Demand for Payment.
Location	Lousybush Lane, Kilkenny.
Planning Authority	Kilkenny County Council.
Planning Authority VSL Reg. Ref.	VSR20-13.
Site Owner	Marrowbond Ltd.
Planning Authority Decision	Charge Levy.
Date of Site Visit	23 rd August 2022.
Inspector	Stephen J. O'Sullivan.

1.0 Introduction

- 1.1. This appeal refers to a Section 15 Notice of Demand for Payment of a Vacant Site Levy issued by Kilkenny County Council for the year 2020 amounting to €61,250 in respect of lands at Lousybush Lane, Kilkenny, identified as VSR 20-13. 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 c1.7ha. Its north-eastern boundary adjoins the back of the curtilage of a detached house whose access is from Granges Road further east. The rest of the lands around the site are undeveloped. Its south-western boundary runs along a narrow metalled road known as Lousybush Lane. This lane has a junction on Lord Edward Street, a road into the city, c90m south-west 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 stating that the PA was of the opinion that the site was a vacant site within the meaning of Section 5(1)(a) of the Act. A section 7(3) Notice was issued 31st 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 applicable development plan for the subject appeal. The site is located on lands that were zoned as “Phase 1 Residential”. An indicative line for Central Access Scheme road runs inside the south western boundary of the site roughly parallel to the Lousybush Lane’.

Variation 4 of that development plan in October 2017 is to reflecting the vacant site levy provisions set out in the act.

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 act refers to the city. The site is zoned New Residential on Figure CS4 Kilkenny City Zoning map. Figure MS7 shows roads objectives in the and around the city. None is shown on or immediately adjacent to the site.

5.0 Planning History

5.1. Reg. Ref. 19/546 – the council refused permission on 10th June 2020 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 was insufficient to efficiently use serviceable land in close proximity to the services in the city; and that it would result in the loss of 15 trees that contribute to the character, amenity and biodiversity.

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-310449-21, Reg. Ref. VSR20-08 – there is an appeal before the board against a notice demanding payment of a levy for 2020 in respect of an adjacent site on the register 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 21st 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 31st December 2019 under Ref. No. VSR20-13, 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 €875,000 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 10th May 2021. The amount sought is €61,250, 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 demand for payment.

- Since the owners became aware of the entry on the register 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 suitability of the site for the development of housing is affected by the location of a potential inner relief road. In June 2019 the council requested that permission not be sought for the land on that basis.
- 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 lands are adversely affected by the location of the proposed inner relief road; 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 entry on the site in 2019 under VSR19-7 was cancelled due to the serving of notices to an incorrect address. Revised notices for the same site were issued under VSR20-13. They were sent to the registered address of Marrowbond Ltd., which is Niall and Angela Browne, Marrowbond Ltd., Ayrfield House, and the site was entered on the register for 2020. Niall and Angela Browne are registered as directors of the company that owns the site.

- 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.
- The council do not consider that the roads objective would prevent the development of the site for housing. This was communicated in an email from the Senior Planning to the owner's agent in June 2019.
- 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 1st January 2021 as residential development was being actively pursued upon it.
- There is a roads objective that impinges on the site and the land is not suitable for the provision of housing at present.
- 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 notices are not properly addressed with references Niall and Angela Browne and Marrowbond Ltd. The Section 15 demand was addressed 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. The site is not in use for housing, nor was it on the 1st January 2020, the 10th May 2021 or the 4th 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 site was vacant or idle on the 1st 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 1st January 2020. The indicative line of the roads objective that was shown on the development plan map at the time would not have prevented or significantly impeded the development of the site for housing. It would simply be a material consideration that would have to be taken into account when designing the layout and specifications of the access streets that are always required in the development of housing on new lands. It is therefore concluded that the site was suitable for the provision of housing on 1st 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 site was vacant, was suitable for the provision of housing and was in an area in need of housing on 1st 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 €875,000 was issued under section 12(4) of the act in respect of the site 22nd September 2021. This valuation was not appealed. The notice under appeal seeks payment of a levy for 2020 of €61,250, 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 and 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 appellants’ account of their connection and dealings in relation to the site, including the applications for planning permission and the delays resulting from the Covid 19, are noted. Nevertheless the site was and remains in an area in need of housing, is suitable for the provision for housing and is not being used for housing or otherwise. It therefore remains a vacant site that is registered as such and so is liable to a levy. The act does not include provisions whereby the board can set aside that liability on the grounds that an owner has made unsuccessful efforts to address the vacancy of the site, unless the failure of those efforts demonstrates that the site was not actually suitable for housing at the relevant time. That circumstance does not arise in this case.

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 1st January 2020 and was a vacant site on 4th 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 €61,250 (sixty-one thousand, two 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 1st day of January 2020 or that the amount of the levy had been incorrectly calculated in respect of the site by the planning authority and
- (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