



An  
Bord  
Pleanála

## Inspector's Report ABP-310626-21

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<b>Type of Appeal</b>	Appeal against a Section 18 Demand for Payment.
<b>Location</b>	Lands at Knocknahorgan, Glanmire, County Cork (Folio CK123800F) known as 'Sallybrook'.
<b>Planning Authority</b>	Cork City Council.
<b>Planning Authority VSL Reg. Ref.</b>	VS0058.
<b>Site Owner</b>	1 Ballea Land Limited.
<b>Planning Authority Decision</b>	Demand Payment.
<b>Date of Site Visit</b>	9 August 2022.
<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 Cork City Council, stating their demand for a vacant site levy for the year 2020 amounting to €157,500 for vacant site lands at Knocknahorgan, Glanmire, County Cork (Folio CK123800F), and identified as VS0058. The notice was issued to 1 Ballea Land Limited and dated 28 May 2021. 1 Ballea Land Limited have 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 Cork County Council on the 20 September 2018. The value of the subject site is stated to be €2,250,000. The Notice of Market Value was addressed to Bluescape Limited.
- 1.3. On the 30 May 2018, a section 11(1) notice issued to Bluescape Limited as a reminder that the site had been placed on the register, VS0031 and includes the Folio 123800F.
- 1.4. On the 9 January 2018, the Notice of Entry on the Vacant Sites Register was issued to Bluescape Limited, VS0031 and includes the Folio 123800F.
- 1.5. A Notice of Proposed Entry on the Vacant Sites Register was issued to Bluescape Limited on the 21 November 2017, referenced as VS0031 and included Folios CK170154F and CK123800F, in a single site outline.

## **2.0 Site Location and Description**

- 2.1. The appeal site is located to the north of Glanmire, approximately 8km north east of Cork City on the western side of the River Glashboy Valley. The appeal site is located on lands that are gently sloping. The area is characterised as agricultural with low to medium density residential development. The appeal site is currently a working building site, with a number of nearly complete houses and others in various stages of construction.

## **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 recommendation by the planning authority to issue a Notice under Section 7(1) of the Act. The recommendation stated 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.

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 Cork County Development Plan 2014 is the operative development plan and the Cobh Municipal District Local Area Plan 2017 is the operative local plan for the subject appeal. The site is located on lands that were subject to zoning objective GM-R-01 – Medium B density residential development, with advanced strategic planting, to be retained in the long-term, on the northern and western edges of the site to act as a definite limit to any further development in this area. Development of these lands should include landscaping and protection of the more vulnerable slopes.

4.2. Chapter 14 of the Development Plan refers to Zoning and Land Use and includes variation number 1 with reference to implementation of the Vacant Site Levy in residential and regeneration areas as follows:

### **Vacant Sites Levy**

It is the intention of Cork County Council to implement the provisions of the Urban Regeneration and Housing Act 2015, through the establishment of a Vacant Sites Register, identifying sites on which a vacant site levy can be applied. The planning authority will proactively engage through the Municipal District sub-county structures, to identify suitable vacant sites on lands zoned residential and on lands designated

as regeneration areas in this plan, which meet the criteria for inclusion in the vacant site register. This will be achieved through a focused application of the levy, facilitating sustainable urban development and bring such vacant sites and buildings in urban areas into beneficial use.

### Regeneration Areas

The Urban Regeneration and Housing Act 2015, provides for the inclusion of objectives for the development and renewal of areas identified as being in need of regeneration. As part of the preparation of the Local Area Plans, regeneration sites have been identified in many of our towns. The main objective in identifying Regenerations Areas is to draw attention to the opportunities that exist to redevelop key areas within the towns, where such sites have the potential to contribute to the rejuvenation of the towns, deliver housing, and perhaps act as a catalyst for other developments. In accordance with the provisions of the Urban Regeneration and Housing Act 2015, regeneration areas may, in time, be subject to the Vacant Sites Levy where the regeneration area is vacant or idle and this has adverse effects on the amenities / character of the area.

### County Development Plan Objective

#### ZU 5-1 Vacant Site Levy-Residential and Regeneration Areas

Encourage the development and renewal of areas, on lands zoned as residential that meet the criteria as set out in the Urban Regeneration and Housing Act, 2015 and on lands designated as regeneration areas, identified in Municipal District Local Area Plans, having regard to the Core Strategy, that are in need of regeneration, in order to prevent –

- (i) adverse effects on existing amenities in such areas, in particular as a result of the ruinous or neglected condition of any land,
- (ii) urban blight and decay,
- (iii) anti-social behaviour or
- (iv) a shortage of habitable houses or of land suitable for residential use or a mixture of residential and other uses.

### 4.3. **Cork City County Development Plan 2022-2028**

The Cork City Development Plan 2022-2028 was adopted by resolution of the Council on the 10 June 2022 and takes effect on 8 August 2022. The Cork City Development Plan 2022-2028 is subject to a Draft Ministerial Direction. In accordance with Section 31(7)(c) of the Planning and Development Act 2000 (as amended) submissions or observations in respect of the Draft Ministerial Direction can be made to Cork City Council between Friday 19th August until and Friday 2nd September 2022.

With reference to the subject site the following reinstatement is noted:

(i) MA no. 2.62 i.e. the subject land reverts to ZO 18 Landscape Preservation Zones from ZO 2 New Residential Neighbourhoods.

## 5.0 Planning History

### 5.1. Subject site:

**PA ref 1938995** and **ABP Ref PL28.306928**. Construction of 37 no. dwelling houses and all ancillary site development works. August 2020.

**PA ref 19/38937** – 40 houses

**PA ref 16/5554** and **ABP Ref -248234**. 89 houses, and ancillary site development works. October 2017.

### 5.2. VSL Appeal History

#### Site Nearby:

**ABP-300837-18** – Proposed entry onto the Vacant Sites Register. Notice Confirmed August 2018.

## 6.0 Planning Authority Decision

### 6.1. Register of Vacant Sites Report:

- 6.1.1. Register of Vacant Sites Report (first report) – Site inspection date 23 November 2016. The site is zoned under objective R-01 Medium B residential development. The planning history of the site is outlined with a number of permissions, the most recent is for 89 dwellings. The site is in use for agriculture. The site is classified as

residential land and has been vacant or idle which will be confirmed in 12 months. The report is supported by colour photographs.

- 6.1.2. Re-inspection Report – 23 November 2017. The site has been zoned GM-R-01 Medium B Density Residential in the new LAP.
- 6.1.3. Re-inspection Report – site visit 6 February 2020. The site continues to be vacant.
- 6.1.4. Re-inspection Report – site visit 18 May 2021. The site is currently being cleared in relation to permission 19/38937, no houses under construction. Remain on register and demand levy for 2020.

## **6.2. Planning Authority Notice**

- 6.2.1. Cork City Council advised the site owner that the subject site (Planning Authority site ref. VS0058) is now liable for a payment of the levy for 2020 (Folio Ref: CK123800F) for €157,500. Payment terms and methods are outlined.
- 6.2.2. The Demand Notice, references a site valuation for Folio Ref:CK123800F of €2,250,000. A Notice of Determination of Market Value was issued to Bluescape Limited on the 20 September 2018 stating that the valuation placed on the site is €2,250,000 and instructions to make an appeal to the Valuations Tribunal.
- 6.2.3. A section 11(1) Notice issued with respect to the site (VS00031) on the 30 May 2018 reminding the owner that their site had been placed on the register.
- 6.2.4. A section 7(3) Notice issued on the 9 January 2018, advising the owner that their site had been placed on the register, accompanied by a site map. The Notice was sent to Bluescape Limited. VS00031 is referenced as the site identifier, across a larger landholding and references Folio 123800F.
- 6.2.5. A section 7(1) Notice issued on the 21 November 2017, advising the owner that their site had been identified as a vacant site and invited submissions, also accompanied by a site map. The notice references section 5(1)(a) of the 2015 Act.

## **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 Cork City Council to demand a levy payment for a site that has already been placed on the Register. The grounds of the appeal can be summarised as follows:

- The test for a section 18 appeal is examined, and the conclusion reached that there are two instances of identifying sites as none vacant, use as of the 1<sup>st</sup> of January in the year concerned and at the time the appeal is made. The site was in use for the provision of housing in 2020 and at the time the appeal was made.
- The planning history of the site is outlined, including a number of variations to houses types and appeals to the Board. At the date of the current appeal, the owner is actively implementing all relevant decisions. A report outlines with the assistance of dated photographs the scale and extent of development works on the site. It is stated that the first of the homes will be completed by November (2021).
- Even though works progress on the site, at the time of placement on the register, the site was not a vacant site because it lacked the infrastructure to support housing. In this report it is noted that condition 5 of Phase B development highlighted a surface water deficiency and required engagement with the planning authority to reach a satisfactory drainage arrangement. Section 6(5)(b) of the 2015 Act refers, and a legal case is cited, the site is not a vacant site.
- Covid restrictions prevented active construction work on site during 2020. This is another thing that affected the site, so that the site was not suitable for housing.
- The appeal site is dependent on the completion of road access from the site to the east and so therefore lacked the necessary infrastructure to allow housing to progress. It is not possible to access the public road to the west (a farm lane) because of a ransom strip in third party ownership.

The appellant explains that they purchased the site in October 2019 and the levy demand for 2018 and 2019 was correctly set at zero.

## 7.2. Planning Authority Response

7.2.1. The planning authority note the history of the site in terms of planning permissions and vacant site entry is noted, so too is change of ownership.



- 7.2.2. The surface water constraints of the site covered by 19/38995 were addressed by further information and a condition that required greater engagement by the developer.
- 7.2.3. In relation to Covid restrictions, no stay on the issuance of demand notices came from the minister.
- 7.2.4. Photographs taken from different locations in 2020 show less extensive works on site. In May 2021 a site visit was conducted, and the site deemed to meet the requirements for retention on the register and to issue a demand.

## **8.0 Assessment**

### **8.1. Introduction**

- 8.1.1. This current appeal relates to a Section 15 Demand for Payment. There is also a concurrent appeal on adjacent lands with the planning authority reference number VS0057 and the Board reference: ABP-310671-21. 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 1<sup>st</sup> 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) i.e. that the site constituted a vacant site in the first instance when the recommendation to serve a 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 1<sup>st</sup> of January in the year concerned, in this case 2020.

### **8.3. Is it a Vacant Site?**

- 8.3.1. A recommendation to serve a Section 7(3) Notice of Entry on the Vacant Sites Register was issued on the 9 January 2018. No Section 9 appeal was made to the Board. The appellant and also the new owner of the site has now questioned the

characteristics of the site in terms of its qualification as a vacant site under the terms of the 2015 Act, in their view the site is not suitable for housing because it lacks a direct connection to the public road and surface water drainage constraints.

However, the appellant frames this contention in the context of works already begun on the site and that these works are now sufficient to lift the site from the register and escape the levy charge. In addition, it is stated that some homes will be completed by the year end of 2021.

8.3.2. In terms of the notices issued by the planning authority, I can see that the correct processes were followed and section 7(1), 7(3) and an 11(1) notice all issued to Bluescape Limited, the previous owner. The relevant notices were not appealed to the Board. The new owner, the appellant, obtained the lands in question in October 2019 and the levy charge for the previous years was rightly set at zero in accordance with section 17 of the 2015 Act. I am not sure that the appellant in this instance has any standing to challenge whether the site should have been placed on the register in the first place, when they knowingly purchased the site with whatever burdens pertained.

8.3.3. Planning permissions were duly sought and granted by the planning authority and the new owner set about the development of the site. It seems to me that any constraints that pertained to the lands in question were known by both the developer and planning authority and did not prevent a permission being subsequently granted for housing. Unlike the Navratil Case cited by the appellant, there are no infrastructural constraints as set out by section 6(5)(b) of the 2015 Act that relate to this site, permission was after all granted by the planning authority with further engagement necessary to finalise surface water remedies and this would be fairly standard practice. The appellant has also stated that due to a lack of direct public access the site should not qualify as a vacant site. In this respect, I note that initial considerations by the planning authority placed the entire site (VV0031) on the register, with the means of vehicular access always to be provided via the public road to the east. At this late stage and during the construction of houses on the lands, to suggest that the site in question is not suitable for housing because it lacked the public infrastructure and facilities to permit access is a contradiction. When I consider that the owner of the lands, had it within their control and means to provide road access as permitted by the relevant planning consents. Which in fact, is

what has already happened on site, the access road is now mostly complete. In this respect, I do not consider that the site should fail to be a vacant site in accordance with section 6(5)(b) of the 2015 Act.

8.3.4. In my view it is not correct of the appellant to suggest that the site is not suitable for housing, when in fact they are engaged upon the work of developing the site for housing. It is this aspect of the appellants grounds of appeal that I find most compelling and a matter I examine in the following sections of my report.

8.3.5. To conclude, the site was initially placed on the register in December 2017 and the majority of the site was considered vacant for the period of twelve months prior to that date. The assessments provided by the planning authority provide the basis for the decision to place the site on the register and I find them to comply with the requirements of the 2015 Act in relation to residential land. The owner at the time, did not appeal this decision of the planning authority. I am satisfied that the site was correctly entered onto the register as a vacant site under the criteria of a residential site and the planning authority used the proper mechanisms to do so. The lands were vacant at the time of placement on the register and so the site qualifies as a vacant site under the terms of the 2015 Act.

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

8.3.6. The appellant has made the point that an appeal made under section 18 of the 2015 Act allows for the consideration of the lands at the time of appeal. The relevant parts of section 18 states:

*(1) The owner of a site who receives a demand for payment of vacant site levy under section 15 may appeal against the demand to the Board within 28 days after the date of the demand.*

*(2) On an appeal under this section the burden of showing that—*

*(a) the site was no longer a vacant site on 1 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.*

*(3) Where the Board determines that a site was no longer a vacant site on 1 January in the year concerned, or is no longer a vacant site on the date on*

*which the appeal under this section is made, it shall give written notice to the planning authority who shall cancel the entry on the register in respect of that site and shall cancel the demand made in respect of that year.*

- 8.3.7. The appellant has honed in on section 18(3) of the 2015, and suggests that the works carried out on the site up to the point that the appeal was made should be taken into consideration by the Board. I agree with this line of thought and have applied the same principle to other section 18 appeals where it is clear that a significant amount of development works have occurred in pursuit of the provision of housing. Likewise in this instance, the appellant has prepared a detailed report illustrated with dated photographs that show the extent of works that occurred up to and including 2021, when the appeal was lodged. My observations of the site in 2022 confirm that significant works on the site have yielded a number of houses that are very close to completion. It is clear that works had occurred to facilitate housing on this site in terms of the land clearance illustrated in the appellant's report linked to the provision of housing. The planning authority are not so convinced and are also not satisfied that enough works had taken place in the year concerned 2020 to be considered significant.
- 8.3.8. I should point out to the Board that the initial vacant site with the reference number VS0031 comprised two large landholdings. These two sites were split into two vacant sites with the reference numbers VS0057 and VS0058, an action that is seemingly accepted by the appellant. Be that as it may, the subject appeal in relation to VS0057 is a portion of land that provides the only access to VS0058 and by virtue of the subject site's topography will provide almost no housing but will provide the means to access flatter lands eminently suited to the provision of houses. Once the larger site (the subject of this appeal), had been unlocked by this new access road, development works have continued apace. This being so I am satisfied that a considerable amount of works occurred during 2020 and at the time that the appeal was made (23 June 2021) for the sole purpose of the development of the site for the provision of housing, as demanded by the 2015 Act. This contention is further reinforced by the fact that nearly complete houses are currently on site.
- 8.3.9. In addition, I have observed that the physical condition of the site has altered completely since the site was placed on the register and a significant number of new houses are nearing completion. The appellant has successfully demonstrated a use

for the site over the relevant period. My observations of the site show that the lands are now fully under development for the provision of housing. I am satisfied that the site was not vacant or idle for the year 2020 or at the time the appeal was made, the levy should not be charged for 2020 and the placement of the site on the register be cancelled.

#### **8.4. Levy Calculation**

- 8.4.1. A Notice of Determination of Market Value was issued to Bluescape Limited on the 20 September 2018 stating that the valuation placed on the site is €2,250,000. No evidence from the appellant has been submitted to show that this valuation was appealed to the Valuation Tribunal.
- 8.4.2. A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to 1 Ballea Land Ltd on the 28 May 2021 for the value of €157,500.
- 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.

#### **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 cancel the Notice of Demand for Payment of Vacant Site Levy as the site was no longer a vacant site on the 1<sup>st</sup> of January of 2020 and on the 23 June 2021, the date on which the appeal was made. The demand for payment of the vacant site levy under Section 15 of the Urban Regeneration and Housing Act 2015 is, therefore, cancelled. 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.

#### **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 extent of construction works on the site in the year concerned, that being 2020 and on the 23 June 2021, the date on which the appeal was made,

the Board is not satisfied that the site was a vacant site in the year concerned or on the 23 June 2021, the date on which the appeal was made. The demand for payment of the vacant site levy under Section 15 of the Urban Regeneration and Housing Act 2015 is, therefore, cancelled.

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Stephen Rhys Thomas  
Senior Planning Inspector

September 2022