



An
Bord
Pleanála

Inspector's Report ABP-310639-21

Type of Appeal	Appeal against a Section 18 Demand for Payment.
Location	Site Western side of Doughiska Road, Galway.
Planning Authority	Galway City Council.
Planning Authority VSL Reg. Ref.	057A East.
Site Owner	Caroline Burke.
Planning Authority Decision	Demand For levy.
Date of Site Visit	1 October 2021.
Inspector	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 Galway City Council, stating their demand for a vacant site levy for the year 2020 amounting to €35,000 for vacant site lands at Old Doughiska Road, Galway, and identified as 057A EAST. The notice was issued to Caroline Burke and dated 2 June 2021. The owner Caroline Burke 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 Galway City Council on the 20 March 2020. The value of the subject site is stated to be €500,000.
- 1.3. A Notice of Proposed Entry on the Vacant Sites Register was issued to Gerard Burke, Justin Burke and to Caroline Burke on the 5 March 2019. On the 27 June 2019, the Notice of Entry on the Vacant Sites Register was issued to Gerard Burke and to Caroline Burke. This section 7(3) notice was not appealed to the Board.

2.0 Site Location and Description

- 2.1. The site is located in the eastern suburbs of Galway City, off the Doughiska Road, a wide road that provides access to some agricultural land, commercial sites and numerous housing estate areas north of the R921. The appeal site is located to the west of the Doughiska Road and comprises a slightly sloping site, part of which is laid out as grazing and part overgrown with vegetation. No animals were grazing on the site visit date, though a feed trough and water trough were visible in the field.

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)(a) of the Act. A section 7(3) Notice was issued 27 June 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. **Galway City Council Development Plan 2017-2023**

Section 2.2 Housing Strategy

The Urban Regeneration and Housing Act 2015 allows for the implementation in 2018 of a vacant site levy to be paid by the owner of a registered vacant site. The levy is intended as a mechanism to incentivise the development of vacant sites, enabling them to be brought into beneficial use or encouraging their sale to those who have an interest and resources to develop. Monies raised from the levy will be required to be spent on housing or public improvements in the vicinity of the site. In this regard the Council will commence in 2017 the preparation of a vacant sites register for the city in accordance with the Urban Regeneration and Housing Act 2015 and 2016 DECLG guidance.

Section Schedule 1 Housing Strategy - 1.2 Legislation

Also introduced under this legislation is a vacant site levy to be paid by the owner of a registered vacant site. The levy is intended as a mechanism to incentivise the development of vacant sites, enabling them to be brought into beneficial use or to encourage their sale to those who have an interest and resources to develop. Monies raised arising from the levy will be required to be spent on housing or public improvements in the vicinity of the site. The Council is required to commence the preparation of a Vacant Sites Register for the city in 2017 and the levy will be implemented in 2018.

5.0 Planning History

5.1. Subject site

98/950 – Permission refused for 15 Light industrial units and a treatment plant/percolation area.

6.0 Planning Authority Decision

6.1. Planning Authority Reports

6.1.1. Planning Reports

- Report for site visits 09/12/16 and 05/12/18 – the lands are considered to be residential for the purposes of the 2015 Act. The site is suitable for housing and is vacant.
- Report for 5/04/19 – no submission received, ownership confirmed as Caroline Burke, issue section 7(3) Notice.

The reports are accompanied by maps and photographs.

The documentation is accompanied by a valuation report and an extract from the VSR. In addition, a string of email correspondence is included and that refers to clarification of ownership details.

6.2. Planning Authority Notice

6.2.1. Galway City Council advised the site owner that the subject site (Planning Authority site ref. 057A EAST) is now liable for a payment of the levy for 2020 of €35,000.00. Payment terms and methods are outlined.

6.2.2. A Notice of Determination of Market Value was issued to Caroline Burke on the 20 March 2020 stating that the valuation placed on the site is €500,000 and instructions to make an appeal to the Valuations Tribunal.

6.2.3. A section 7(3) Notice issued on the 27 June 2019, advising the owner (Gerard Burke and Caroline Burke) that their site had been placed on the register.

- 6.2.4. A section 7(1) Notice issued on the 5 March 2019, advising the owner (Gerard Burke, Justin Burke and Caroline Burke) that their site had been identified as a vacant site and invited submissions.

7.0 The Appeal

7.1. Grounds of Appeal

- 7.1.1. The landowner has submitted an appeal to the Board, against the decision of Galway City Council to retain the subject site on the Register and charge the levy. The grounds of the appeal can be summarised as follows:

- According to the photographs used by the planning authority, the wrong site was surveyed and so the site should not be on the register.
- The site was farmed by the previous owner (Gerard Burke) until a change in ownership on 22 May 2018 to Caroline Burke (daughter). Gerard Burke therefore is exempt from the levy, when inspected in 2018 the planning authority declared the site vacant for the previous 12 months. The site should be exempt from the levy until Caroline Burke became the new owner.
- The lands are still farmed by Justin Burke (brother), Department of Agriculture area aid is received, during the site visit of December 2018 by the planning authority, livestock were housed and not visible on the lands. The site is still used to graze horses but must undergo rest periods to allow new grass growth and avoid 'horse sick' land.

The grounds of appeal are accompanied by appendices that contain, photographs that explain the location of each site, details of a track used by oil trucks, amended site map to show what fields were surveyed by the planning authority, Department of Agriculture description of lands and a correspondence from J Burke that explains the use of the lands.

7.2. Planning Authority Response

The planning authority confirm that the correct site was surveyed. Site inspections took place 9 December 2016 and 5 December 2018 and all documentation was

made available to the appellant after an unsuccessful complaint to the Ombudsman. Ownership during assessment has no bearing on placement on the register. The lands have been zoned for residential purposes for the last three development plan cycles and most recently the residential density of the lands was changed from low density residential to residential.

7.3. **Further Response**

The owner reiterates earlier grounds of the appeal, the site was and is in use for farming.

First inspection is invalid, the levy should only apply to the new owner (the appellant).

The appellant's fields are being targeted for the levy and would like to see all other sites that are on the register.

The Ombudsman's letter is submitted and the appellant explains that they did not appeal in the first instance for personal reasons (family bereavement).

The increase in residential density of the lands has no bearing on this appeal.

8.0 **Assessment**

8.1. **Introduction**

8.2. At the outset, I draw the Board's attention to a concurrent appeal for lands in the ownership of the appellant and located nearby, ABP-310685-21 refers. Both appeals reference the belief that the planning authority did not survey the correct site, in each case, a matter I address in detail. 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.

8.3. **The site is no longer vacant**

- 8.3.1. 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.
- 8.3.2. I note that a section 9 appeal was not made to the Board for these lands and so for the purposes of my assessment, I will consider both scenarios.

8.4. Is it a Vacant Site?

- 8.4.1. A Section 7(3) Notice of Entry on the Vacant Sites Register was issued on the 27 June 2019. A Section 9 appeal was not made to the Board and the owner states that this was due to personal circumstances. A Gabriel Dolan on behalf of a Michael Gerard Burke did make a submission in relation to the section 7(1) notice, that explains a plan to develop the lands in the future. In addition, a further submission was made around May 2019 that explains a plan to develop the lands because a Justin Burke had purchased the site subject to planning permission.
- 8.4.2. The planning authority had regard to the contents of the section 7(1) submission but placed the site on the register. I am satisfied that there was enough engagement with the VSR process by the owner, and it is unfortunate that circumstances of a personal nature meant the owner elected not to appeal in the first instance.
- 8.4.3. The site was initially placed on the register in June 2019 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 did not appeal this decision of the planning authority; however, they did engage with the process and made a submission after the initial section 7(1) notice. The owner's submission referred to a desire to develop the land at some point in the future.
- 8.4.4. Now the owner, Caroline Burke, claims that the site surveyed by the planning authority was not the correct site and that the site should not have been considered in the first place because her father (the previous owner) farmed the land. The

planning authority are satisfied that the correct site was surveyed, photographs and maps illustrate this point. The planning authority also state that any site can be considered for placement on the register, if it meets the various criteria, ownership only becomes an issue when charging the levy.

8.4.5. The owner has not raised any issue with the criteria set out under sections 5(1)(a)(i) and (ii), that is the need for housing and whether the site is suitable for housing. In fact, the documentation held on the appeal file indicate an intention to develop the land for housing at some point in the future. This has not yet happened. In this instance I do not consider it necessary to reassess the site against the criteria set out in sections 6(4) and 6(5) of the 2015 Act, when I am satisfied that the planning authority have already done this and I agree with their outcome, there is a need for housing and the lands are suitable.

8.4.6. The owner has questioned why their site should be placed on the register when in the middle of the process, ownership passed from their father to them. The planning authority have pointed out that a change of ownership does not prevent a site from moving on to the register, section 17 of the 2015 Act refers:

(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.

- 8.4.7. Section 17(2)(b) refers in this instance and is clearly meant as a measure to prevent an unreasonable charge to be levied. The new owner, Caroline Burke, seems to have mistaken this section of the 2015 Act as a way to pause the process of registering a site. It is not, but it is simply a way of ensuring that a new owner is not burdened with a charge on the land, which could in turn slow the development of the land for residential development or active use if a regeneration site.
- 8.4.8. The wider issue raised by the landowner is that the wrong site was surveyed by the planning authority. In the grounds of appeal documentation, the owner refers to a track that leads to their house and includes photographs and a maps to illustrate the point. I can confirm that the site (reference number 057A East and ABP reference 310639-21) surveyed by the planning authority relates to a field on the west side of Doughiska Road, there is no confusion here. I am satisfied that the correct site was surveyed by the planning authority, the written reports, planning history, maps and photographs all indicate that the current site is the correct site.
- 8.4.9. The site was initially placed on the register in June 2019 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 elected not to 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 site is no longer vacant as of the 1st of January 2020

- 8.4.10. The owner asserts that the lands have always and continue to be farmed and because of changes made by the 2018 amendment to the 2015 Act, the site should not be placed on the register. The new owner thinks that because ownership changed in May 2018, the previous owner should not be charged.
- 8.4.11. Firstly, the Demand for Levy issued for the lands refers to the year 2020 and is made out to Caroline Burke. I can see no evidence for a demand for any previous years and so it appears that the planning authority have taken into account any previous owner and the use of the site for agriculture. The lands are now in new ownership (Caroline Burke) and this changes matters for the site, despite the land still being used for agriculture. A fact that is supported by the documentation submitted by the appellant and evidence to be seen on the site, feed and water troughs are present on site. However, because ownership changed in May 2018, as a new owner, Caroline Burke is liable for the levy charge for 2020, section 5(1)(a)(iii)(II) refers:
- (iii) the site, or the majority of the site is —*
- (I) vacant or idle, or*
- (II) being used for a purpose that does not consist solely or primarily of the provision of housing or the development of the site for the purpose of such provision, provided that the most recent purchase of the site occurred —*
- (A) after it became residential land, and*
- (B) before, on or after the commencement of section 63 of the Planning and Development (Amendment) Act 2018.*
- 8.4.12. The site has been zoned for the last three development plan cycles, according to the planning authority. In this instance, even though the site is in use for agriculture, ownership has changed, the new owner is not making use of the site for the purpose it was zoned and so the levy can be charged. For the purposes of the 2015 Act as amended, the site is a vacant site.

8.5. Levy Calculation

- 8.5.1. A Notice of Determination of Market Value was issued to Caroline Burke on the 20 March 2020 stating that the valuation placed on the site is €500,000. No evidence from the appellant has been submitted to show that this valuation was appealed to the Valuation Tribunal.
- 8.5.2. A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to Caroline Burke on the 2 June 2020 for the value of €35,000.
- 8.5.3. 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. The site should remain on the register and the charge confirmed.

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 23 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.

Stephen Rhys Thomas
Senior Planning Inspector

15 December 2021