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Bord  
Pleanála

## Inspector's Report ABP-310683-21

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<b>Type of Appeal</b>	Appeal against a Section 18 Demand for Payment
<b>Location</b>	Former Dawn Dairies Site, Dublin Road, Galway.
<b>Planning Authority</b>	Galway City Council
<b>Planning Authority VSL Reg. Ref.</b>	039 EAST
<b>Site Owner</b>	Welmount Investments Ltd.
<b>Planning Authority Decision</b>	Demand for Payment
<b>Date of Site Visit</b>	1 October 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 Galway City Council, stating their demand for a vacant site levy for the year 2020 amounting to €112,000 for vacant site lands at the Former Dawn Dairies Site, Dublin Road, Galway, and identified as 039 EAST. The notice was issued to Welmount Investments Ltd and dated 2 June 2021. The owner Welmount Investments Ltd 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 €1,600,000.
- 1.3. A Notice of Proposed Entry on the Vacant Sites Register was issued to Welmount Investments Ltd on the 14 January 2019. On the 12 March 2019, the Notice of Entry on the Vacant Sites Register was issued to Welmount Investments Ltd. The 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 Dublin Road. (R338) Galway Mayo Institute of Technology is located to the north and the Bon Secours Private Hospital is located to the west, Renmore Community Centre and football club is located to the south. The site comprises the former Dawn Dairies factory, with three large warehouse/factory buildings and a large compound and parking area. The site is easily visible from the Dublin Road and Ballyloughane Road. The boundaries comprise low walls to the back of the footpath along the Dublin Road and Ballyloughane Road, to the south a high boundary wall separates the site from playing fields. The western portion of the site is different to the main section as it is mostly overgrown with hedging and trees with a variety of boundary treatments to the rear of private houses along the Dublin Road. The site has the appearance of being vacant, the buildings are in a passible state with no significant areas of dilapidation.

### **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 12 March 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

**06/294** – Demolition of existing buildings.

## 6.0 Planning Authority Decision

### 6.1. Planning Authority Reports

#### 6.1.1. Planning Reports

- Report for site visits 09/12/16 and 15/11/18 – the lands are considered to be residential for the purposes of the 2015 Act. The site was previously in use by Dawn Dairies, but no longer in use. The site is suitable for housing and is vacant.
- Report for site visit 20/04/21 – no recent planning activity, no change of ownership, advertised 'to let'.

The reports are accompanied by maps and photographs.

The documentation is accompanied by a valuation report and an extract from the VSR.

## 6.2. Planning Authority Notice

- 6.2.1. Galway City Council advised the site owner that the subject site (Planning Authority site ref. 039 EAST) is now liable for a payment of the levy for 2020 of €112,000.00. Payment terms and methods are outlined.
- 6.2.2. A Notice of Determination of Market Value was issued to Welmount Investments Ltd on the 20 March 2020 stating that the valuation placed on the site is €1,600,000.00 and instructions to make an appeal to the Valuations Tribunal.
- 6.2.3. A section 7(3) Notice issued on the 12 March 2019, advising the owner that their site had been placed on the register.
- 6.2.4. A section 7(1) Notice issued on the 14 January 2019, advising the owner 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:

- Background - The site was vacated by Dawn Dairies/Kerry Group in 2014 and since then the site has been available for let. Some interest in the property has been expressed by a Garden Centre and Courier business, but planning obstacles made the site unattractive. Though the site has been predominantly industrial in the past, traffic congestion remains an impediment to development proposals.
- Incorrect entry on the VSR – the owner did not appeal the s9 or s12 notices because they were unclear of the process and thought that the Derelict Sites Act was the relevant legislation and that another letter would follow.

It was unclear to the owner how the site was entered onto the register and the owner now challenges whether the site should've have been placed on the register in the first place.

- Property is not a vacant site – Since 2018 the site has been in use to store timber by a Mr Creaven (caretaker), letter and photographs demonstrate this fact. The site is also in use by Renmore AFC to store an Astro turf pitch.
- Amount of Levy Miscalculated – the correspondence received by the owner with regard to demand for payment are contradictory and refer to 3% and 7% values.

The grounds of appeal are accompanied by appendices that contain, correspondence, photographs and the PA notices.

## 7.2. **Planning Authority Response**

The planning authority confirm that they correctly followed procedures as set out in the 2015 Act with regard to the placement of a site on the VSR. Extracts from detailed assessments and site visits have already been sent to the Board.

The PA note the uses mentioned by the owner, but the uses do not constitute the provision of housing as per section 5(1)(a)(iii) of the 2015 Act, the lands were zoned residential before acquisition by the current owner in 2018.

The valuation report details how a value was arrived at (already submitted), the demand for payment was issued on 1 June 2021 and the levy is due for 2020.

## 7.3. **Further Response**

The owner reiterates earlier grounds of the appeal. In addition, the site has always been in industrial use and will remain so. A building supplier has now leased the site.

Finally, the owner underlines their misunderstanding of the whole process and that they should not be penalised for that.

## 8.0 **Assessment**

### 8.1. **Introduction**

8.2. 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. For the purposes of this 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 12 March 2019. A Section 9 appeal was not made to the Board. The owner did not make a submission in relation to the section 7(1) notice, that notice clearly sets out that the site was going to be placed on the Vacant Site Register (VSR) as a vacant residential site. Instead, the owner points out that they were unsure about the VSR process and thought that they had been entered onto the Derelict Sites Register. Instead of engaging with the planning authority the owner awaited more correspondence from the PA and elected not to appeal in the first instance. The appellant does not challenge the criteria set out in relation to section 5(1)(a) of the 2015, in terms of whether there is a housing need in the area of whether the site is suitable for the provision of housing. I do not intend to revisit these issues. Instead the appellant relies on the fact that the site was not actually vacant and has been in continual use since they took up ownership.

8.4.2. It is an unfortunate set of circumstances for the owner in relation to not fully understanding the planning authority's intent but, does not address any actual use for the site. The site was initially placed on the register in March 2019 and the majority of the site was considered vacant for the period of twelve months prior to that date. The owner disputes the planning authority's methodology in terms of site



survey and claims the site had and continues to be in use. 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, through an apparent misunderstanding on their part. The correspondence and notices received by the owner clearly set out why their site was selected for inclusion on the VSR, no mention is made of derelict sites. 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 of engagement to do so.

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

- 8.4.3. The owner's site was placed on the VSR in March 2019 and on the 1 June 2021 a Demand for Payment notice was issued for the year 2020. The owner sets out that since they took ownership in November 2012 a number of industrial/commercial uses have been sought for the site but anticipated difficulties in obtaining planning consent stalled these propositions. The site is overseen by a caretaker; timber and an AstroTurf playing surface are also stored on site. It is these uses for the site that are put forward to demonstrate that the site has and continues to be in use and that a builder's providers business is about to occupy the site too.
- 8.4.4. The planning authority point out that the site is not being used for the purposes it was zoned, residential uses. Even though a use may be ongoing, the appellant took ownership after the lands were zoned for residential purposes and so the site should stay on the register and the levy charged. The planning authority's point of view is correct and seemingly the owner does not understand the intricacy of the 2015 Act and the definition of a vacant site as it refers to residentially zoned land.
- 8.4.5. The Urban Regeneration and Housing Act 2015 was amended in 2018 to address the scenario where land was transferred to a new owner and the prior use was continued by that owner, for example agricultural land and farming use or in this case commercial land and commercial use. Section 5(1)(a) of the amended 2015 Act states:

*(1) In this Part, a site is a vacant site if—*

*(a) in the case of a site consisting of residential land—*

- (i) the site is situated in an area in which there is a need for housing,*
- (ii) the site is suitable for the provision of housing, and*
- 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.*

8.4.6. What the amendment of the 2015 Act means in practice is that just because a site changed hands it cannot continue to operate as it did before the transaction and escape inclusion on the register and the levy charge if it had been zoned for residential uses prior to the change of circumstances. This is just such a case with the appeal site. The use as a dairy passed before the appellant took ownership and despite seeking uses and eventually finding a current storage use, this does not protect the site from the levy.

8.4.7. As a residentially zoned site, placed on the register on that basis, the site should be used for a purpose that consists solely or primarily of the provision of housing or the development of the site for the purpose of such provision, and the continuation of commercial/industrial uses that were historically acceptable would not protect the site from register, if under new ownership. According to the planning authority, the site was zoned for residential purposes before ownership changed in November 2012, the Galway City Development Plan 2011-2017 confirms this.

From my observations of the site and glimpses of the interior, I am not convinced that any actual formal use was being carried out from the buildings in the complex. I did notice that doors were open at the large warehouse in the southern section of the lands, but normal business activities did not seem to be going on. However, I acknowledge that the use of the site for storage purposes could well be the case. But that makes no difference in the context of the amended 2015 Act and the fact that despite evidence provided by the owner

that the site is in use for storage purposes and the imminence of a new occupier, the site should remain the register and the charge levied. The site should remain on the register because it is not 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 housing, after it became residential zoned land.

## **8.5. Levy Calculation**

- 8.5.1. A Notice of Determination of Market Value was issued to Welmount Investments Limited on the 20 March 2020 stating that the valuation placed on the site is €1,600,000.00. 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 Welmount Investments Limited on the 2 June 2020 for the value of €112,000.00.
- 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.
- 8.5.4. The owner contends a degree of confusion as to what rate should be applied, when earlier correspondence referred to 3% and the demand notice referenced 7%. This is understandable up to a point. The levy rate applicable in this instance is 7%. The rate of levy has been increased from 3% to 7% of the market valuation of relevant sites with effect from January 2020, to be applied in respect of sites that were included on vacant site registers in 2019. The site was included in the register in 2019 and the demand notice was accompanied by a correspondence that states in the preamble that the vacant site levy is now payable for 2020. Ideally, the Notice should also reference for what year the levy is being charged. However, the 2015 Act does not illustrate or define what should be contained in a Notice and so each planning authority is left to their own devices. In this instance, I am satisfied that the planning authority included all that was needed in their section 15 Notice and the accompanying correspondence to dispel any doubt for what year the charge is for or how it was calculated. 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 28 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

17 November 2021