



An
Bord
Pleanála

Inspector's Report ABP-312140-21

Type of Appeal	Appeal against a Section 18 Demand for Payment (VS/K/03B).
Location	Lands west of Main Street, Kilcoole, County Wicklow.
Planning Authority	Wicklow County Council.
Planning Authority VSL Reg. Ref.	VS/K/03B.
Site Owner	Brookhampton Limited.
Planning Authority Decision	Demand for payment of vacant site.
Date of Site Visit	19 September 2022.
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 Wicklow County Council, stating their demand for a vacant site levy for the year 2020 amounting to €15,400 for a site west of Main Street, Kilcoole, County Wicklow, and identified as VS/K/03B.
- 1.2. A Notice of Proposed Entry on the Vacant Sites Register was issued to Laurence Keegan on the 26th January 2018. On the 4th July 2018, the Notice of Entry on the Vacant Sites Register was issued to Laurence Keegan, this was not appealed.
- 1.3. A valuation pertaining to the site was issued by Wicklow County Council on the 15th December 2019. The value of the subject site was stated to be €270,000. This notice was subsequently appealed to the Valuation Tribunal, new value is €220,000 dated 11th March 2021.

2.0 Site Location and Description

- 2.1. This site comprises a rectangular shaped area of ground, that fronts onto Main Street in Kilcoole. The northern boundary of the site is made up with the rear garden walls of houses in the Ashlawn Estate. The southern boundary comprises an overgrown earth bank and hedgerow that aligns with a narrow laneway that provides access to agricultural land. The western end of the site merges with a larger agricultural field. The site interior is overgrown and slopes gently downwards from north to south. Ruinous structures are located at the south eastern corner of the site close to the junction of Main Street and Sea Road. An amount of dumped rubbish was noted inside the gateway entrance of the site with the public road.

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) and 6(6) of the Act. The 7(1) Notice was issued 26th January 2018. The site was subsequently entered onto the register 4th July 2018.

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

4.1.1. The current **Wicklow County Development Plan 2016-2022** 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 stand alone 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.

Kilcoole is a Settlement Zone 3 where TC and VC are included for the purposes of the Act. The site is zoned TC in the current Plan.

- 4.1.2. **Wicklow County Development Plan 2022 – 2028** – According to the planning authority, the County Council meeting of 12th September 2022 the Elected Members of Wicklow County Council resolved to make the Wicklow County Development Plan 2022 - 2028. This Plan will come into effect on the 23rd October 2022.

5.0 Planning History

5.1. Subject site

ABP-302552-18 – Permission refused for 267 no. residential units (225 no. houses, 42 no. apartments), 5 no. retail units, 4 no. office units, childcare facility, innovation hub and associated site works, the three reasons include:

1. There is a lack of certainty in relation to the wastewater network capacity, pump station capacity and the water storage requirements for the development. Having regard to the existing deficiency in the provision of adequate sewerage and water supply infrastructure serving the subject site, it is considered that the proposed development would be premature by reference to the existing deficiencies in the provision of sewerage and water supply facilities and the period within which this constraint may reasonably be expected to cease, and would be prejudicial to public health. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. Having regard to the information provided in the Report for the purposes of Appropriate Assessment Screening, dated the 26th day of June 2018, and the absence of any assessment of the potential for effects from the deficiencies in the existing municipal sewer network and treatment system, the Board could not be satisfied that the potential for effects on Special Conservation Interest bird species of The Murrugh Special Protection Area (site code 004186) or the potential effects on qualifying interests (annual vegetation of drift lines, perennial vegetation of stony banks, Atlantic salt meadows, Mediterranean salt meadows, Calcareous fens with *Cladium mariscus* and species of the Caricion

davallianae and Alkaline fens) within The Murrough Wetlands Special Area of Conservation (site code 002249) could be logically ruled out.

The Board therefore cannot be satisfied, beyond reasonable scientific doubt, that the proposed development, either individually or in combination with other plans and projects, would not adversely affect the integrity of these European sites, The Murrough Special Protection Area and The Murrough Wetlands Special Area of Conservation in view of the sites' conservation objectives.

3. The proposal for the construction of 14 number residential units, namely 113-122, on lands zoned open space would materially contravene an objective indicated in the Greystones-Delgany and Kilcoole Local Area Plan 2013-2019, which objective is considered reasonable. It is considered that the inclusion of these houses, within an area of land in which residential development is not permitted, would not be in accordance with Section 9(6)(b) of the Planning and Development (Housing) and Residential Tenancies Act 2016. Accordingly, the Board is not in a position to grant permission for these residential units.

5.2. VSL Appeal History

None.

6.0 Planning Authority Decision

6.1. Planning Authority Reports

- 6.1.1. Register of Vacant Sites Report (first report – 25th January 2018) – The site is vacant, ruinous / neglected appearance and signs of antisocial behaviour taking place.
- 6.1.2. Register of Vacant Sites Report (second report – 28th June 2018) – Site visits, 13/06/18, 21/06/18 and 24/06/18. The submission from the owner is noted. For the purposes of the register, the larger site is broken into three, that is A, B and C. The site remains vacant, ruinous and neglected appearance and signs of antisocial behaviour taking place.
- 6.1.3. Section 15 Report – (13th January 2020), site visit 10th January 2020, the site remains vacant, ruinous and neglected structures on site, appearance and signs of

antisocial behaviour taking place (dumping). Charge levy, await outcome of Valuation Tribunal appeal.

6.2. Planning Authority Notices

- 6.2.1. Wicklow County Council advised the site owner that the subject site (Planning Authority site ref. VS/K/03B) is now liable for a payment of 7% of its valuation. The site is valued at €220,000 and hence the levy for 2020 is €15,400. Payment terms and methods are outlined. Notice dated 8th November 2021. Previous Notices withdrawn upon request.

Valuation Tribunal determination of market value - €220,000, dated 14th October 2021.

- 6.2.2. A Section 12(4) Notice issued on the 18th December 2019, advising the owner of the site valuation (€270,000) and instructions to make an appeal to the Valuations Tribunal, accompanied by a map with the site outlined.
- 6.2.3. A section 7(3) Notice issued on the 4th July 2018, advising the owner that their site had been placed on the register.
- 6.2.4. A section 7(1) Notice issued on the 26th January 2018, advising the owner that their site had been identified as a vacant site and invited submissions, accompanied by a site map.

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 Wicklow County Council to retain the subject site on the Register and demand the levy. The grounds of the appeal can be summarised as follows:
- There is a deficiency of adequate water services infrastructure to serve the site and this is demonstrated by a refusal of permission to development wider lands in the area, ABP-302552-18 refers. In addition, the appellant engaged with Irish Water, and a PWSA dated 14th May 2020 states that significant infrastructural works are required to allow development in Kilcoole.

The Draft Wicklow County Development Plan, states that lack of investment in infrastructure has meant that Kilcoole is not in position to provide large numbers of new housing.

A recent pre-planning consultation on the same lands with the Board states that any future application must address water services constraints, ABP 304438-19 refers.

The site therefore fails to meet the criteria set out in section 6(5)(a) and/or (b) of the 2015 Act.

- There is a lack of road infrastructure, section 10.10 of the LAP sets out the need for and route of a western distributor road. The site is constrained and according to an engineer's report would require the need for an inefficient four arm junction. The site is therefore not suitable for housing, the site therefore fails to meet the criteria set out in section 6(5)(a) and/or (b) of the 2015 Act.
- The Council Action Plan for the area highlights mainly civic uses on the site leaving space for only 9 houses, well below the density required by the plan. The site is therefore unsuitable for the provision of housing.

The appeal is supported by a very detailed appendix that contains the following documents: Council planning report regarding ABP-304348-19, Irish Water report on Kilcoole and Newtownmountkennedy PWSA's dated May 2020, ABP-304348-19 Board Opinion, Draft Action Plan for Bullford 2017.

7.2. Planning Authority Response

The site was included on the register because it is a regeneration site not a residential site, for the purposes of the 2015 Act. Therefore, no regard is had to the issues raised by the appellant in relation to section 5(1)(a) of the 2015 Act with regard to residentially zoned lands.

Delays in the valuation process should not alter the status of the demand for the calendar year 2019. Site was inspected January 2020 and in any case the site remains vacant and neglected.

The matter of services and infrastructure is not a concern when regarding regeneration sites.

Calculation of the levy is confirmed by the Valuation Tribunal €220,000 at 7% amounts to €15,400.

7.3. Further Submission

- 7.3.1. The appellant has responded to the comments raised by the planning authority, as follows:

The Board must take into account the issues raised by the appellant, regardless of whether the site is regeneration or residential, a de novo approach must be adopted.

Confusion over the year of the levy charge (2020 or 2019) means the notice is inherently unlawful.

Reference to infrastructural capacity in 2022 has no relevance to the matter in hand, constraints as of 2020 or 2019 are the relevant dates.

8.0 Assessment

8.1. Introduction

- 8.1.1. The Board should note that a concurrent appeal on a nearby site under the same ownership has been lodged, ABP-312139-21 refers.

- 8.1.2. This 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.

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)(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. The appellant has stated that the Board should assess this appeal anew and consider whether the site should have been placed on the register in the first place. To inform this stance, the appellant has brought into play the criteria set out in the 2015 Act for residential lands and how the site is severely constrained due to the lack of infrastructure. In that context the appellant states that the site is not suitable for housing. No commentary on the existing condition of the site or a use for the site has been advanced by the appellant. The planning authority correct the appellant and point out that the site is actually a regeneration site for the purposes of the 2015 Act and quite different criteria are brought to bear. Finally, the site is vacant and the neglected and ruinous condition of structures on site have an adverse impact upon the amenities and character of the area.

8.3.2. Firstly, the appellant has requested that the Board should assess this appeal de novo, meaning that a fresh look from the beginning should take place. Furthermore, the appellant requires that any new assessment should take into account the criteria set out for residential lands in the 2015 Act. I am certain that this approach cannot be used by the Board because, section 5(1)(b) of the Act sets out the criteria for a vacant site consisting of 'Regeneration' land. Only consideration of the criteria that is applicable to regeneration sites, that is section 5(1)(b) and section 6(6) can apply. By reference to the Planning Authority notice, it is stated that the subject site comprises 'Regeneration' land for the purposes of the Vacant Site Levy. A Section 7(3) Notice of Entry on the Vacant Sites Register was issued to the original owner Laurence Keegan in July 2018. A Section 9 appeal was not made to the Board, but a detailed submission was made to the planning authority by the previous owner and this was given due consideration by the planning authority and this is reflected in their second report.

8.3.3. The criteria for a regeneration site are very different to that of residential lands and the matters raised by the appellant to do with the site not being suitable for housing have no place in the assessment of a regeneration site such as this. Section 5(1)(b) and section 6(6) of the 2015 Act, state:

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

(b) in the case of a site consisting of regeneration land—

(i) the site, or the majority of the site, is vacant or idle, and

(ii) the site being vacant or idle has adverse effects on existing amenities or reduces the amenity provided by existing public infrastructure and facilities (within the meaning of section 48 of the Act of 2000) in the area in which the site is situated or has adverse effects on the character of the area.

(6) A planning authority, or the Board on appeal, shall determine whether or not the site being vacant or idle has adverse effects on existing amenities or reduces the amenity provided by existing public infrastructure and facilities (within the meaning of section 48 of the Act of 2000) in the area in which the site is situated or has adverse effects on the character of the area for the purposes of this Part by reference to whether—

(a) land or structures in the area were, or are, in a ruinous or neglected condition,

(b) anti-social behaviour was or is taking place in the area, or

(c) there has been a reduction in the number of habitable houses, or the number of people living, in the area,

and whether or not these matters were affected by the existence of such vacant or idle land.

Matters raised by the appellant with regard to lack of infrastructure and thus the site is not suitable for housing is irrelevant in this instance.

- 8.3.4. The planning authority have plainly set out that the land is a regeneration site for the purposes of section 5(1)(b) and section 6(6) of the 2015 Act and, and this fits within Policy HD19 of the Development that states TC zoned lands should be included as regeneration lands. This formed the basis for the placement of the site on the register. There is no mechanism to undo or change this decision. The site stands on the register as it is, until matters change regarding vacant or idle status or that such status no longer adversely affects the amenities or character of the area.

8.3.5. The site has been on the register since July 2018. Given the reports of the planning authority and the detailed response given to the submission made by the original landowner, I am satisfied that the site constituted a vacant site when the Section 7(3) Notice was issued. A significant amount of time has passed since the site was first assessed by the planning authority, and I can see that numerous planning reports leading up to the serving of demand notices took place and conclude that the site still fulfils the requirements for a vacant site under the terms of regeneration lands. I do not, therefore, propose to consider this matter any further in this assessment.

8.4. Is the site no longer vacant as of the 1st of January 2020?

8.4.1. In section 8.3 above, I have established that the site was and is a vacant site in terms of section 5(1)(b) of the 2015 Act. The appellant has submitted that the site should be assessed as a residential site and should not have been placed on the register in the first place. The appellant has not advanced a use for the site or addressed the condition of the lands during the relevant period. The planning authority reiterate that the site is vacant, that is not in use, and that its ruinous and neglected condition adversely affects the character of the area.

8.4.2. In assessing this matter, I will consider the characteristics of the site in the context of Section 5(1)(b) 'regeneration' land. There are two specific criteria to be considered in this regard.

The site, or the majority of the site, is vacant or idle:

8.4.3. The appellant has not advanced any use for the site. The planning authority's photographs show a number of ruinous structures close to the road and a site interior that is overgrown with little evidence of any use at all. During my observations of the site I detected no actual use for the site either. The site interior is overgrown with vegetation and structures on site were in a ruinous condition. My observations of the site agree with those of the planning authority in this regard. The appellant has made much about the timing of the planning authority's site visits and reference in the PA's submissions to the year 2019, PA submission dated 10 January 2022 refers. However, I am satisfied that a site visited conducted in January 2020 for the purposes of the Demand Notice for that same year meets the requirements of the 2015 Act. Ostensibly, the condition of the lands have not changed and a use has yet to be found for the site. This fact is further reinforced by

the lack of a use for the site to be advanced by the appellant, whom relies solely on a completely new assessment of the site as a residential site for the purposes of the 2015 Act. I have already explained that this cannot be done, section 8.3 above refers and I am satisfied that the site is vacant or idle for the purposes of a regeneration site as defined by the 2015 Act.

The site being vacant or idle has adverse effects on existing amenities or reduced the amenity provide by existing infrastructure and facilities (within the meaning of section 48 of the Act of 2000) in the area in which the site is situated or has adverse effects on the character of the area.

8.4.4. It is stated under section 6(6) of the Act that the matters relating to adverse effects are to be determined by reference to the following criteria:

(a) Land and structures in the area were, or are, in a ruinous or neglected condition

(b) Anti-social behaviour was or is taking place in the area, or

(c) There has been a reduction in the number of habitable houses, or the number of people living, in the area

and whether or not these matters were affected by the existence of such vacant or idle land

8.4.5. I am satisfied that the site was and is a vacant site in accordance with the meaning set out in the 2015 Act. I will consider each of the criteria set out in section 6(6) of the 2015 Act in turn.

8.4.6. Firstly, the planning authority note the condition of the site, its neglected appearance, the existence of ruinous structures and litter and the impact it is having on the amenities and character of the area. I note that the site is clearly visible from the street, and though buildings have been painted to resemble former cottages they are all clearly in a ruinous condition. The overall site and its boundaries are overgrown with vegetation, and there are no signs that regular or any maintenance has taken place over the years. It is all these factors that have and are affecting the overall character of the area. The condition of the site cannot and could not be compared favourably with other sites in the vicinity. The wider area is characterised by a number of elements: the well maintained public realm and the quality and character

of neighbouring buildings. It is because of the vacant nature of the subject site and its ruinous and neglected appearance, when compared with other property in the area, that I am satisfied that the site is ruinous and has been neglected in line with the criteria set out in Section 6(6)(a) of the 2015 Act.

8.4.7. The second matter that section 6(6)(b) refers to is anti-social behaviour which was or is taking place in the area. The planning authority's photographic surveys show a collection of litter, and this provides the basis for concluding that antisocial behaviour probably was and is taking place. I too notice an amount of dumped material on site, and I consider that the site would meet this test.

8.4.8. In terms of a reduction in the number of habitable houses, or the number of people living, in the area. I note that on site structures are in a ruinous condition and may well have been habitable cottages in the past. Neither the planning authority or the appellant raise this as a matter to consider either way and I am satisfied those structures are of no consequence in this instance. I find that there is no hard evidence either way to suggest that there has been a reduction in the number of habitable houses, or the number of people living, in the area.

8.4.9. Because the Act includes commas and an 'or' between (a), (b) or (c), only one criteria is required to be met. In conclusion, I consider that two of the tests in Section 6(6) are met and that the site has adverse effects on the character of the area and that antisocial behaviour was or is taking place, so thus can be categorised as a vacant site as defined by Section 5(1)(b)(ii). In addition, I am satisfied that the ruinous and neglected condition of these vacant lands has an adverse effect on existing amenities and reduces the amenity provided by existing public infrastructure and facilities (within the meaning of Section 48 of the Act 2000) in the area in which the site is situated, particularly due to the strategic location of the lands along Kilcoole Main Street and its proximity to physical and social infrastructure.

8.5. **Other Matters**

8.5.1. Ownership Change - I note that the site has changed ownership to Brookhampton Limited, correspondence on file is noted and the levy charge is for 2020 and not previous years.

8.5.2. Demand Notices – The Board will observe that a number of section 15 notices are present on file. This is for a variety of reasons, but principally to await the outcome of

the Valuation Tribunal's deliberations. I have had regard to the most recent demand notice and it is this that has prompted the appeal on hand.

8.6. Levy Calculation

- 8.6.1. A Notice of Valuation Entered on the Vacant Site Register was issued to Brookhampton Ltd on the 15th of December 2019 stating that the valuation placed on the site is €270,000. This was appealed to the Valuation Tribunal, that through compromise determined a market value of €220,000, dated 14th October 2021.
- 8.6.2. A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to on the 8th November 2021 to the value of €15,400 for the year 2020.
- 8.6.3. 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. It is evident, therefore, that the levy calculation has been correctly calculated.
- 8.6.4. The appellant has raised questions about what year the planning authority seek the levy charge for and reference is made to different years in the submissions received by the Board. I can see from the Demand Notice dated 8th November 2021 that the planning authority seek the levy charge for 2020 and this is logical, given the survey dates and determination of market value. I am satisfied that it is the year 2020 that the levy has been demanded and I have based my assessment on this time frame.

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 of January 2020 and was a vacant site on 3rd December 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) That the majority of the site is and was vacant,
- (e) The ruinous and neglected condition of the site which detracts from the amenities and character of the area,
- (f) The evidence of antisocial behaviour having taken place on the site,
- (g) The amount of the levy has been correctly calculated at 7% of the site value,

the Board is satisfied that the site was a vacant site on the 1st of January 2020 and was a vacant site on 3rd December 2021, the date on which the appeal was made and the amount of the levy has been correctly calculated. The demand for payment of the vacant site levy under Section 15 of the Urban Regeneration and Housing Act 2015 is, therefore, confirmed.

Stephen Rhys Thomas
Senior Planning Inspector

30 September 2022