



An
Bord
Pleanála

Inspector's Report ABP-312408-22

Type of Appeal	Appeal against a Section 18 Demand for Payment.
Location	Lands at Caltragh Road, Sligo.
Planning Authority	Sligo County Council
Planning Authority VSL Reg. Ref.	SL-VS-17.
Site Owner	Bernard Mullen.
Planning Authority Decision	Demand for Payment.
Date of Site Visit	06 October 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 Sligo County Council, stating their demand for a vacant site levy for the year 2020 amounting to €30,450 (thirty one thousand, four hundred and fifty euro) for vacant site lands at Caltragh Road, Sligo and identified as SL-VS-17. The notice was issued to Bernard Mullen and dated 15th December 2021. The appellant Bernard Mullen 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 Sligo County Council on the 2nd September 2019. The market value of the subject site is stated to be €435,000.
- 1.3. A Notice of Proposed Entry on the Vacant Sites Register was issued to Bernard Mullen on the 22nd February 2018. On the 25th October 2018, the Notice of Entry on the Vacant Sites Register was issued to Bernard Mullen. 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 southern suburbs of Sligo Town, adjacent to the Caltragh Road that accesses Sligo from the N4. The site is accessed from Caltragh Road via a minor laneway. The site has no direct frontage to the Caltragh Road. The site is square in shape. The site boundaries mostly comprise mature hedgerow and trees. The site is mostly level but slopes gently upwards to the west. The site comprises a single agricultural field, in grass with farm gates and a shipping container in the south western portion of the site.

3.0 Statutory Context

- 3.1. **Urban Regeneration and Housing Act 2015 (as amended).**
 - 3.1.1. The site was entered onto the register subsequent to a Notice issued under Section 7(1) of the Act that stated the PA was of the opinion that the site referenced was a vacant site within the meaning of Section 5(1) and 5(2) of the Act. A section 7(3) Notice was issued the 25th October 2018 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. Sligo and Environs Development Plan 2010-2016 (SEDP)

The Sligo and Environs Development Plan 2010-2016 (SEDP) was adopted in November 2009 and was due to expire in 2015. When Sligo Borough Council was abolished in 2014, the lifetime of the SEDP was automatically extended in accordance with the provisions of section 11A of the Planning and Development Act 2000 (as amended). In August 2017, the provisions of the SEDP were further extended through incorporation into the Sligo County Development Plan 2017-2023 (CDP). The CDP states that the policies and objectives of the SEDP will continue to apply until the adoption of a Local Area Plan for Sligo and Environs.

The County Development Plan or Sligo Environs LAP are yet to be drafted.

The site is zoned **MIX-1** – mixed uses (non-retail), Objective: Promote the development of a dynamic mix of uses able to create and sustain vibrant residential and employment areas.

Commercial (non-retail), residential, leisure, employment/enterprise uses are encouraged by this zoning.

4.2. Sligo County Development Plan 2017-2023

Section 3.7.4 Vacant site levy

The Urban Regeneration and Housing Act 2015 introduced the vacant site levy as a site activation measure, to ensure that vacant or underutilised land in urban areas is brought into beneficial use, while also ensuring a more efficient return on State

investment in enabling infrastructure and helping to counter unsustainable urban sprawl.

The vacant site levy can be imposed by planning authorities under certain conditions in designated areas, i.e. where sites remain vacant and site owners/ developers fail to bring forward reasonable proposals, without good reason, for the development/reuse of such property in line with the provisions of the relevant local area or development plan.

For the purpose of the application of the vacant site levy, a site means “any area of land exceeding 0.05 hectares identified by a planning authority in its functional area but does not include any structure that is a person’s home.”

The levy shall be applied annually by a local authority at a rate of 3% of the market valuation of the vacant sites, exceeding 0.05 hectares in area, with reduced and zero rates applying in certain circumstances (0.05 hectares roughly equates to one-eighth of an acre or 500m²). The market valuation shall be determined by the local authority by authorising a suitably qualified person to estimate the price which the unencumbered fee simple of the site would fetch if sold on the open market. The levy shall be payable by the registered owner(s) of the site. Sligo County Council will implement the vacant site levy as provided for in the Urban Regeneration and Housing Act 2015 and in accordance with the requirements set out in the Department’s Circular Letter PL 7/2016.

It is an objective of Sligo County Council to: **Objective O-REG-1** Identify areas in need of regeneration in Sligo City and, if appropriate, in the Key Support Towns of Ballymote, Enniscrone and Tobercurry, as part of the process of review or preparation of the respective local area plans.

5.0 **Planning History**

5.1. **Subject site**

None relevant.

6.0 Planning Authority Decision

6.1. Planning Authority Reports

6.1.1. Planning Reports

- Report 1 – site visit 13th October 2016, undeveloped greenfield site with a shipping container, zoned MIX-1, no recent planning history.
Recommendation to serve section 7(1) notice.

- Report 2 – site visit 27th October 2017, undeveloped greenfield site with a shipping container, zoned MIX-1, no recent planning history.
Recommendation to serve section 7(1) notice.

Memo Note (14th February 2018) – site can be considered as residential despite MIX-1 zoning objective.

- Report 3 – Report date 26th March 2018, submission received and noted, the site can be considered to be available for residential development under MIX-1 zoning. The site is considered to be residential land, there is a need for housing, nothing effects the site to prevent the provision of housing and the site has been vacant for the preceding 12 months. Recommendation to serve section 7(3) notice.

Update as of 7th September 2018 – apply the amendment to the 2015 Act, no exemption from levy based upon the date of site purchase.

- Report 4 – site inspection 20th September 2019, site in use for animal grazing.
- Report 5 – dated 20th February 2020, site use for grazing animals, site remains vacant for the period 2019, no change of ownership.
- Report 6 – dated 27th October 2020, still a vacant site, demand payment for 2019.

6.2. Planning Authority Notice

- 6.2.1. Sligo County Council advised the site owner that the subject site (Planning Authority site ref. SL-VS-17) is now liable for a payment of the levy for 2020 of €30,450 (thirty

one thousand, four hundred and fifty euro). Payment terms and methods are outlined.

- 6.2.2. A Notice of Determination of Market Value was issued to Bernard Mullen on the 2nd September 2019 stating that the valuation placed on the site is €435,000 and instructions to make an appeal to the Valuations Tribunal.
- 6.2.3. A section 7(3) Notice issued on the 25th October 2018, advising the owner that their site had been placed on the register.
- 6.2.4. A section 7(1) Notice issued on the 22nd February 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 Sligo County Council to retain the subject site on the Register and charge the levy. The grounds of the appeal can be summarised as follows:
 - The amount of the levy has been incorrectly calculated because the Valuation Tribunal has yet to determine an appeal to that body in respect of the valuation.

The grounds of appeal are accompanied by a completed application form to the Valuation Tribunal dated 9th June 2020, an acknowledgement correspondence from the Valuation Tribunal dated 19th June 2020 regarding receipt of documents and payment, correspondence from the appellant to the Valuation Tribunal enquiring when a determination might issue dated 6th January 2021 and another dated 6th January 2022, Sligo County Council demand letters dated 16th December 2020 and 15th December 2021.

7.2. Planning Authority Response

- 7.2.1. The planning authority have provided a brief response to the appellant's grounds of appeal and state that the planning authority's previous recommendation to charge the levy stands.

8.0 Assessment

8.1. Introduction

- 8.1.1. 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.

The appellant seeks only to question the levy calculation, however, I will consider each criteria in turn. In addition, I note that the appellant, Bernard Mullen, has concurrently appealed three other Demand Notices issued by Sligo County Council on similar terms, An Bord Pleanála reference numbers 312398, 312399 and 312400 all refer.

8.2. The site is no longer vacant

- 8.2.1. 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.

- 8.2.2. For the purposes of this assessment, I will consider both scenarios.

8.3. Is it a Vacant Site?

- 8.3.1. A Section 7(3) Notice of Entry on the Vacant Sites Register was issued on the 25th October 2018. A Section 9 appeal was not made to the Board however, a submission to the planning authority was made by the owner after the section 7(1)

notice was issued. For clarity, the site was placed on the register based upon the criteria for a residential site, section 5(1)(a) and section 6(4) and (5) of the 2015 Act refer. The planning authority underline this fact in their report of October 2017, before the section 7(1) notice was issued. The grounds of appeal raised by the appellant before the Board in the current appeal, do not refer to any of the criteria for placement on the register.

- 8.3.2. In the submission to the planning authority in relation to the section 7(1) notice, matters concerning whether the lands should be considered as residential lands as a the site is zoned for mixed use, were raised. I am satisfied that the planning authority responded to this query adequately. The planning authority stated that the primary use on the lands concerned would be for residential uses, section 3 of the planning report dated 26th March 2018 refers. The site is zoned MIX-1 – mixed uses (non-retail), the objective of which is to promote the development of a dynamic mix of uses able to create and sustain vibrant residential and employment areas. Commercial (non-retail), residential, leisure, employment/enterprise uses are encouraged by this zoning. This fits with Section 3.7.4 *Vacant site levy*, of the County Development that states lands zoned for residential uses will be considered for the vacant site levy under section 5(1)(a) of the 2015 Act. The owner elected not to appeal the decision of the planning authority to place the site on the register.
- 8.3.3. A subsequent memo from the planning authority issued on 10th September 2018 stated that the amendments to the 2015 Act required by section 63 of the 2018 Act were considered prior to the section 7(3) notice issued. These dates are important, because matters changed significantly for residential lands and any use that may have occurred before the lands were zoned should be considered if ownership had not changed. I raise this point because the planning authority have noted that the lands have been used for livestock grazing, PA reports dated 20th September 2019 and 20th February 2020 both refer.
- 8.3.4. Section 63 of the 2018 Act makes changes to section 5(1)(a) of the 2015 Act as follows:
- (iii) the site, or the majority of the site is—*
 - (l) 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.

- 8.3.5. This would mean that if an owner was in possession of lands, used for farming for example, and they owned that land before it became zoned for residential purposes, then that farming use should be considered as a use. The planning authority state that they have taken into account all of these matters. From the documentation on file, I can see that Land Registry details Bernard Mullen as the owner since a least 1993 and in addition the Council's Valuation report notes that the site has been in the owner's name for some time. From the information on file, I cannot tell if the lands were zoned residential after or before Bernard Mullen became the owner of the site in question. I have to rely that the planning authority have considered these matters in detail and given that the appellant has at no time raised the topic of a use for the site I am satisfied that no further analysis is required on the part of the Board.
- 8.3.6. The owner has not directly challenged the decision to place the site on the register in the first place. Instead, the focus is on the demand for payment of the levy charge for 2020. The owner has simply stated that the demand has been incorrectly calculated because the Valuation Tribunal is yet to determine a market value for the site in question.

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

- 8.3.7. The owner has not made any reference in their grounds of appeal to a use for the lands in question. The planning authority have provided site survey dates and photographs that show a greenfield site, unchanged over the years. In addition, the planning authority note that the site was in use for grazing in 2019 and 2020. On the day of my site visit I observed similar conditions to those noted by the planning authority. I observed no livestock on site, but it is probable that the site in question has been in use for livestock grazing in the past. The site has not been developed and remains as it was when placed on the register.

- 8.3.8. The Board may note that the 2015 Act was amended in July 2018, by the Planning and Development (Amendment) Act 2018. This amendment made changes concerning section 5(1)(a)(iii) of the 2015 Act and relate to the consideration of uses that may have been ongoing before the land became zoned residential, as stated at section 8.3.4 of my report.:
- 8.3.9. The amendment to the 2015 Act sought to recognise that some uses such as farming that had occurred on the site before land was zoned residential and that farming use continues on site, should be recognised as a bona fide use and be taken into consideration when assessing whether to place the site on the register. The appellant has not raised any matters that relate to this amendment or in fact any matter to do with process of placing the site on the register and I suggest that it may not be applicable in any case. The planning authority have produced a Land Registry folio number (13814) that refers to the site and this documentation states that Bernard Mullen has been in ownership of the lands in question since 1993. However, I have no information available to me to with regard to when the lands were zoned for residential purposes. I am therefore unable to ascertain with certainty if the matter of a previous and ongoing use such as farming would be relevant in this instance. However, as the planning authority have already considered such matters, I do not consider that any further assessment in this direction is warranted or necessary. The site has been placed on the register and the owner elected not to appeal that decision despite engaging with the initial phases of the vacant site registration process.

8.4. Levy Calculation

- 8.4.1. A Notice of Determination of Market Value was issued to Bernard Mullen on the 2nd September 2019. stating that the valuation placed on the site is €435,000. The appellant has provided evidence to show that the market valuation was appealed to the Valuation Tribunal. The grounds of appeal are accompanied by a completed application form to the Valuation Tribunal dated the 9th June 2020, and an acknowledgement correspondence from the Valuation Tribunal dated the 19th June 2020 regarding receipt of documents and payment. In addition, there is correspondence from the appellant to the Valuation Tribunal enquiring when a determination might issue dated 6th January 2021 and another dated 6th January

2022. According to the appellant, the Valuation Tribunal have yet to determine a value for the site and until that time, no levy demand can be correctly calculated.

8.4.2. The planning authority have included in their submission to the Board, a correspondence dated the 18th June 2021 addressed to the Valuation Tribunal in response to a call for documentation from the Valuation Tribunal to assist in their consideration of the valuation case. The planning authority point out that because the appeal to the Valuation Tribunal was received on the 18th June 2020, more than 28 days after the Notice of Determination of Market Value was issued by the planning authority (2nd September 2019), such an appeal is invalid. To assist the Board, the relevant section of the 2015 Act is section 13 as follows:

(1) The owner of a vacant site may appeal to the Tribunal against a determination made by a planning authority under section 12(1) within 28 days after the date of the notice given under section 12(4).

8.4.3. The planning authority have concluded that the appeal to the Valuation Tribunal is invalid, and so therefore all of the other items requested by the Tribunal are unnecessary. Specifically, the Valuation Tribunal have requested at item 5 of their request to the planning authority (dated 19th June 2020) – *does the appeal comply with the time limits specified by the Act?* To which the answer of the planning authority is negative. There is no other information on the file concerning the appeal to the Valuation Tribunal and whether it is still current or declared invalid. The appellant states in their further submission of the 28th March 2022, that the Valuation Tribunal are yet to determine the appeal, it seems that they have not received any indication to the contrary from the Tribunal.

8.4.4. From an administrative point of view, it would seem to me that the owner has suffered from a lack of communication from the Valuation Tribunal with regard to the status of their appeal. A matter worsened by the delay in the response of the planning authority to the Tribunal's enquiry about the validity of the appellant's appeal. All of these matters cannot be changed by this appeal, the fact is that the owner lodged an appeal to the Valuation Tribunal beyond the 28 days allowed for in the 2015 Act. There is no provision within the 2015 Act to allow such a time period to be elastic and extended to allow late appeals. To reinforce this view, I bring to the Board's attention that the Valuation Tribunal had asked the planning authority does

the appeal comply with the time limits of the 2015 Act, it did not and I am satisfied that the appeal to the Valuation Tribunal has no place in the current appeal regarding levy calculation.

- 8.4.5. A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to Bernard Mullen on the 15th December 2021 for the value of €30,450, however, the amount in words is stated at thirty one thousand, four hundred and fifty euro. The site in question has been valued at €435,000. The applicable rate for the period concerned is 7%, this would amount to a levy charge of €30,450 or thirty thousand, four hundred and fifty euro, it is evident, therefore, that the levy calculation arrived at in words has been incorrectly stated. The Demand Notice issued under section 15 of the 2015 Act incorrectly states the levy due. In accordance with section 18(4) of the 2015 Act, the planning authority should be notified of the correction and take the necessary action.

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 7th January 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 has determined that the amount of the levy has been incorrectly stated in respect of a vacant site, written notice shall be given to the planning authority of the correct amount, €30,450 (thirty thousand, four hundred and fifty euro). The planning authority shall amend the demand made in respect of that year in accordance with the revised amount. The demand for payment of the vacant site levy under Section 15 of the Urban Regeneration and Housing Act 2015 is, therefore, confirmed, subject to amendment.

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 1st January 2020, and the site continued to be a vacant site on the day that the appeal was made,
- (e) The amount of the levy has been incorrectly stated in respect of the site by the planning authority, the demand made in respect of 2020 shall be amended in accordance with the revised amount, that is €30,450 (thirty thousand, four hundred and fifty euro),

The demand for payment of the vacant site levy as calculated by the Board under section 18(4) of the Urban Regeneration and Housing Act 2015, as amended, is, therefore, confirmed.

Stephen Rhys Thomas
Senior Planning Inspector

27 October 2021