



An  
Bord  
Pleanála

## Inspector's Report ABP-312938-22

---

<b>Type of Appeal</b>	Appeal against a Section 18 Demand for Payment.
<b>Location</b>	Lands measuring 0.27ha at Poundbrook Lane, Rathdrum, Co. Wicklow.
<b>Planning Authority</b>	Wicklow County Council.
<b>Planning Authority VSL Reg. Ref.</b>	VS/Rathdrum/07.
<b>Site Owner</b>	Henry & Sheena Cullen.
<b>Planning Authority Decision</b>	Demand Levy.
<b>Date of Site Visit</b>	20 September 2022.
<b>Inspector</b>	Stephen Rhys Thomas.

# Contents

1.0 Introduction .....	3
2.0 Site Location and Description .....	3
3.0 Statutory Context .....	4
4.0 Development Plan Policy .....	4
5.0 Planning History.....	5
6.0 Planning Authority Decision .....	5
6.1. Planning Authority Reports .....	5
6.2. Planning Authority Notices .....	6
7.0 The Appeal .....	6
7.1. Grounds of Appeal .....	6
7.2. Planning Authority Response .....	7
8.0 Assessment .....	7
9.0 Recommendation.....	13
10.0 Reasons and Considerations .....	13

## 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 2021 amounting to €8,400 for a site at Poundbrook Lane, Rathdrum, Co Wicklow, and identified as VS/RATHDRUM/07.
- 1.2. A Notice of Proposed Entry on the Vacant Sites Register was issued to Michael Kavanagh on the 26 January 2018. On the 26 June 2018, the Notice of Entry on the Vacant Sites Register was issued to Michael Kavanagh.
- 1.3. A valuation pertaining to the site was issued by Wicklow County Council on the 4 September 2019. The value of the subject site is stated to be €120,000. A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to Henry & Sheena Cullen on the 14 of February 2022 for the value of €8,400. The owners (Henry & Sheena Cullen) have appealed the Demand for Payment Notice issued pursuant to Section 15 of the Urban Regeneration and Housing Act.

## 2.0 Site Location and Description

- 2.1. The appeal site is located in the centre of Rathdrum, a relatively small town in south west Wicklow. The Wexford to Dublin railway line passes the east of the town. The site is located along Poundbrook Lane, a narrow laneway that serves a small number of houses. Poundbrook Lane is accessed from a wide portion of the main street of Rathdrum (R755) opposite St Saviour's Church of Ireland and the streetscape is characterised by fine houses and a neat public realm. The character of Poundbrook Lane is rural, unsurfaced and narrows to a footpath connecting to Brewery to the south.
- 2.2. The subject lands are agricultural in character and slope downwards from north to south. The site comprises a combination of grasses, docks and other vegetation. A wire fence contains the field, and a derelict bungalow occupies the north-eastern corner of the site. No livestock were observed on the lands concerned.

### 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 26 January 2018. The site was subsequently entered onto the register 26 June 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. Rathdrum Local Area Plan 2017 – 2023

4.1.1. The site is subject to zoning objective TC – Town Centre with the Objective – To provide for the development and improvement of appropriate town centre uses including retail, commercial and civic use. The site is also located within an Action Area/Opportunity Site.

4.1.2. 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. Rathdrum is a 'Level 5' settlement in the County Settlement Hierarchy.

**Wicklow County Development Plan 2022 – 2028** - At the County Council meeting of 12 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 23 October 2022.

## 5.0 Planning History

### 5.1. Subject site

PA ref **08/341** and **PL 27.233742**– Permission refused for the demolition of a house and the construction of 22 houses. 2 October 2009.

## 6.0 Planning Authority Decision

### 6.1. Planning Authority Reports

- 6.1.1. Register of Vacant Sites Report (second report – 11 January 2018) - The ruinous condition of the site is having an impact upon the overall appearance of the area, antisocial behaviour takes place.
- 6.1.2. Section 15 Report – (15 January 2020), the site remains vacant, pursue levy charge.

- 6.1.3. Section 15 Report – (29 November 2021), summary of change of ownership and VSL notices to previous owner (Michael Kavanagh and subsequently the receivers). Engagement with new owner outlined and steps described to remove the site from the register noted.
- 6.1.4. Section 15 Report – (10 February 2022), site visit October 2021 and February 2022, the site remains vacant, derelict house remains on site, some improvement works have been carried out, no farming has taken place, in any case lands classed as regeneration. Charge levy.

## **6.2. Planning Authority Notices**

- 6.2.1. Wicklow County Council advised the site owner that the subject site (Planning Authority site ref. VS/RATHDRUM/07) is now liable for a payment of 7% of its valuation. The site is valued at €120,000 and hence the levy for 2021 is €8,400. Payment terms and methods are outlined.
- 6.2.2. A Section 12(4) Notice issued on the 4 September 2019, advising the owner of the site valuation (€120,000) 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 26 June 2018, advising the owner that their site had been placed on the register.
- 6.2.4. A section 7(1) Notice issued on the 26 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:
- The site was not vacant on the 1 January, it has been transformed from its previous condition and now forms part of the home and holding, a herd number is provided and pet animals are kept on the lands. The site is no longer neglected and it does not attract antisocial behaviour. The house on

site remains a ruin, but there are plans to remove rubbish and make the structure good.

- A large number of houses have been provided in Rathdrum in recent years, Viewmount, The Woods, The Lower St Killians Glen and Ballygannon. There is no need for any more houses in Rathdrum.
- The site no longer fulfils the criteria for a Vacant Site.
- The amount of the Valuation of the site is incorrect, the actual market value of the site is €60,967, therefore the calculation is also incorrect.

The appeal is supported by photographs showing the progress of land improvement.

## 7.2. **Planning Authority Response**

- 7.2.1. Documentation already submitted provides the basis for the decision reached. With regard to the levy calculation, this appears to be an issue with the valuation and this cannot form part of this appeal.

## 8.0 **Assessment**

### 8.1. **Introduction**

- 8.2. 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.

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

- 8.3.1. 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 2021.

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

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

8.4.1. Section 5(1)(b) of the Act sets out the criteria for a vacant site consisting of 'Regeneration' land. 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, Michael Kavanagh in June 2018. A Section 9 appeal was not made to the Board, and so the site stands on the register. The planning authority issued a demand notice for previous years to Michael Kavanagh and are still in the process of recovering charges from the appointed receivers.

8.4.2. The new owners, Henry and Sheena Cullen, purchased the site in 2020 and no levy has been demanded for the years 2019 or 2020. They are now required to pay a charge for 2021 and this is the reason for the appeal before the Board. The new owners claim that they were not aware that the site was on the Vacant Site Register, despite publication by the planning authority that shows all those site in Rathdrum and throughout the county that are registered and subject to the levy.

8.4.3. It is unfortunate that the new owner was not aware of the burden placed on the site in terms of charges related to the Vacant Site Levy. However, the site has been on the register since June 2018. Given the reports of the planning authority and despite the lack of a submission made by the original owner to the section 7(1) notice, 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 further in this assessment.

#### **8.5. Is the site no longer vacant as of the 1st of January 2021?**

8.5.1. In section 8.4 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 evidence to suggest that the subject site is no longer vacant/idle and should be removed from the register and the charge cancelled. The new owners of the site have illustrated through photographs the state of the lands since taking ownership in 2020. The



planning authority question the pace of works carried out and maintain that the site still fulfils the criteria for a vacant site, being vacant/idle and given the existence of a ruinous structure.

- 8.5.2. 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:**

- 8.5.3. Photographs submitted by the appellant show the lands in question undergoing improvement, from overgrown waste ground to grazing land. Boundaries have been upgraded and the lands tidied of litter and rubbish. The planning authority's photographs more or less agree, but highlight the existence of the ruined house on site. My own comment on these images is that land improvement can take time, and my own observations of the site in September 2022 confirm that the lands, could be classified as grazing land. The derelict bungalow remains on site and rubbish has been placed into skip bags.
- 8.5.4. The lands have been transformed from overgrown waste ground to a grazing paddock. Whilst the appeal site and wider lands might be in some form of agricultural use, for instance the appellant states that they use the lands to graze pets, the planning authority state that the use of lands for agricultural purposes is not a consideration for regeneration lands. This is a reference to broader VSL issues that arose in relation to residentially zoned lands and the use of lands for agriculture by long term owners before the land was zoned for residential purposes. This would matter a great deal if the lands were zoned residential, they are not and any longstanding uses such as agriculture have no bearing on this appeal. In the context of this site, I think the Board should determine if the lands are simply no longer vacant or idle and for this, I apply the simple meaning of either word.
- 8.5.5. In the case of the subject appeal, the owner has taken a large site, removed some litter, cut away overgrown vegetation and replanted with a grass. The property has been improved and is maintained. In addition, the owner has found a use for the lands, and they are grazed by family pets. No matter how low intensity the use is or incongruous with the urban context and zoning of the site, the owner has concluded that a use has been found for the lands in question.

- 8.5.6. I refer the Board to the preamble of the Urban Regeneration and Housing Act 2015 which states that the purpose of the Act is to make provision with respect to land in areas in which housing is required and in areas which are in need of renewal to prevent it lying idle or remaining vacant. The site lies within an area identified as an Action Area/Opportunity Site in the LAP and as a site in need of regeneration, the spirit of the Act is applicable here.
- 8.5.7. Circular Letter PL7/2016 further details that the intent of the Vacant Site Levy is as a land activation measure primarily to incentivise the activation of development sites and to bring vacant or underutilised land in urban areas into beneficial use by way of a levy. It states that it is important that appropriate mechanisms are put in place to ensure that land, particularly in urban areas is used in the most efficient and effective manner possible. The levy is intended to incentivise such development and ensure that land in urban areas is used appropriately.
- 8.5.8. Appendix 3 of the circular sets out guidance regarding identifying vacant sites. It states:
- “In certain circumstances a site that is vacant may be used on a temporary short term or periodic ad hoc basis.....A site that is vacant and used for such temporary purposes would not be considered as being in full and active use. Therefore, the levy can be applied.”*
- 8.5.9. I note that the appellant has stated that the lands have been improved as part of the overall holding and that they are in use for grazing for family pets. In addition, the appellant states that the lands form part of a family home and should not be included on the register. This is not the case, insofar as a house in ruins occupies the site, there is no connection between this site and any other home and the lands were placed on the register in the first instance with the previous owner electing not to appeal.
- 8.5.10. I am of the view that the current family pet grazing use, which I did not observe and nor did the planning authority, of the site does not represent an appropriate and efficient use of the lands in accordance with the guiding principles of the legislation. The use of the lands for what is essentially a domestic and private use is not development that promotes an efficient and effective use of the lands and does not represent the sustainable development of these strategic brownfield, serviced town

centre lands. Furthermore, I consider that the lands could easily be made available for development by the removal of said pets and so that use is ad hoc and temporary. It is unfortunate that the new owners were not clearly appraised about the placement of the site on the register and the possibility of a levy charge. That is as it may be, I am of the view that the lands in their entirety are, therefore, not in full or active use. I consider that the site is and was vacant.

8.5.11. In conclusion, I consider that the current ad hoc use of the site for family pet grazing is a temporary use. Moreover, the appellant states that they have no intention of developing the site, the lands are attributed special status in the LAP as part of an Action Area/Opportunity Site. This additional opportunity status elevates the site in terms of the importance of making a full and better use of this strategic town centre site. In this regard, I consider that the site constitutes a vacant site by virtue of the inefficient domestic grazing use, that is sporadic in nature and the fact that this marginal and inefficient use renders the majority of the site to have been and continue to be vacant and idle.

**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.**

8.5.12. 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*

8.5.13. I will consider each of these in turn.

8.5.14. From my site visit, I can confirm that the site is maintained for the most part. However, a ruinous building occupies the site and this means that there are

structures that were and are in a ruinous condition on the lands concerned. The appellant accepts this fact and the planning authority rely on it in their decision to make the demand.

8.5.15. The site is maintained in all other respects and it is unlikely that antisocial behaviour was or is taking place on the site.

8.5.16. There is no evidence to suggest that as a result of the vacant site that there has been a reduction in the number of habitable houses, or the number of people living in the area. The appellant makes the point that numerous housing estates have sprung up in Rathdrum in recent years and so a reduction in housing stock has not taken place.

8.5.17. In conclusion, I consider that one of the tests in Section 6(6) is met and that the site has an adverse effect on existing amenities because of the existence of a ruinous structure and thus can be categorised as a vacant site as defined by Section 5(1)(b). I am satisfied that given the planning authority's submissions, my own observations and the owner's lack of evidence to show the site was no longer a vacant site on 1 January in the year concerned or was no longer a vacant site on the date on which the appeal under this section was made, that the site remains a vacant site and the charge should be levied.

## 8.6. Levy Calculation

8.6.1. A Notice of Valuation Entered on the Vacant Site Register was issued to Leslie Armstrong on the 4th of September 2019 stating that the valuation placed on the site is €120,000.

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 14 day of February 2022 to the value of €8,400.

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 an issue about the valuation placed on the site. They state that the subject site and an extended portion of lands were purchased for €140,000

in July 2020. Therefore, the actual value of the site for which the levy is demanded should amount to a market value of €60,967 and the levy calculation based on this new value. The appellant has provided the basis for this revised valuation in their grounds of appeal. As new owners of the site and after a market valuation was placed on the lands concerned, the appellant has had no avenue to appeal the valuation of the site, that window of opportunity passed around September/October 2019, the date the valuation was issued under section 12 of the 2015 Act. As far as I am aware there is no provision in the 2015 Act to revisit the market valuation of a site once the Valuation Tribunal appeal period has passed and the value set on the register. The 2015 Act references the Valuation Act 2001 (as amended), but there are no specific references to Vacant Sites in any section of that particular act.

- 8.6.5. I am satisfied that the levy charge for 2021 has been correctly calculated with reference to the market value placed on the vacant site in question.

## 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<sup>st</sup> of January 2021 and was a vacant site on 7<sup>th</sup> March 2022, 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 ruinous condition of the building on site which detracts from the amenities of the area,

- (e) That the majority of the site is and was vacant,
- (f) The amount of the levy has been correctly calculated at 7% of the site value in 2019,
- (g) There has been no change in the ownership of the site,

the Board is satisfied that the site was a vacant site on the 1<sup>st</sup> of January 2021 and was a vacant site on 7<sup>th</sup> March 2022, 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

September 2022