



An
Bord
Pleanála

Inspector's Report ABP-313063-22

Type of Appeal	Appeal against a Section 18 Demand for Payment.
Location	Hebron House, Hebron Road, Leggettsrath, Co. Kilkenny.
Planning Authority	Kilkenny County Council.
Planning Authority VSL Reg. Ref.	VSR21-2.
Site Owner	Michael Kenny.
Planning Authority Decision	Demand for Payment.
Date of Site Visit	27 July 2022 and 19 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 Kilkenny County Council, stating their demand for a vacant site levy for the year 2021 amounting to €59,500 for vacant site lands at Hebron House, Hebron Road, Leggettsrath, Co. Kilkenny, and identified as VSR21-2. The notice was issued to Michael Kenny (Seamus Dunne, Paddy Smee) and dated 18 February 2022. Michael Kenny 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 Kilkenny County Council on the 6 September 2021. The value of the subject site is stated to be €850,000.
- 1.3. A Notice of Proposed Entry on the Vacant Sites Register was issued on the 20 November 2020. On the 31 December 2020, the Notice of Entry on the Vacant Sites Register was issued to the owner. This section 7(3) notice was not appealed to the Board.

2.0 Site Location and Description

- 2.1. The site is located east of Kilkenny city centre along the N10 and outside the partial ring of the N77 road. The lands are situated in an area characterised by agricultural fields and a small warehouse development to the south. At present the site is occupied by a house and outbuildings in a poor state of repair.

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) of the Act. A section 7(3) Notice was issued 31 December 2020 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. The **Kilkenny City and Environs Development Plan 2014-2020** is the operative development plan for the subject appeal. The site is located on lands that are subject to zoning Business Park – ‘Objective: To provide for commercial activity including industry, information technology-related industrial and office development and ancillary services and retail warehousing.’

Variation 4 of the development plan (October 2017) is to reflect the vacant site levy provisions. Objective 3A To promote the redevelopment and renewal of areas identified having regard to the core strategy, that are in need of regeneration, in order to prevent—

(i) adverse effects on existing amenities in such areas, in particular as a result of the ruinous or neglected condition of any land,

(ii) urban blight and decay,

(iii) anti-social behaviour, or

(iv) a shortage of habitable houses or of land suitable for residential use or a mixture of residential and other uses.

The levy may be applied to all identified ‘Regeneration’ land and ‘Residential’ land in existing land use zonings. In particular, the areas covered by the following zoning objectives are considered to constitute regeneration land:

- General Business
- Mixed Use

- Business Park

Other regeneration zonings may also be identified in any relevant Local Area Plans.

The structure on the site is a protected structure and listed on the RPS under number identifier - RPS B39.

4.2. **Kilkenny City and County Development Plan 2021-2027**, was made on the 3 September 2021 and came into effect on the 15 October 2021.

6.6 Vacant Site Levy

A vacant site levy was established under the Urban Regeneration & Housing Act 2015. This levy is a site activation measure, to ensure that vacant land in urban areas is brought into beneficial use. At the passing of this Act, the Minister stated the levy is a "visible demonstration of the Government's commitment to tackle reasons why so many key sites that are suitable for development are not coming forward at a time of such a major need for housing".

The Urban Regeneration and Housing Act set out two broad categories of vacant land that the levy may apply to:

- i) Lands zoned primarily for residential purposes
- ii) Lands in need of regeneration

The Levy is an integral part of the development planning process to incentivise the development of vacant or idle sites identified by planning authorities as "regeneration land" or "residential land", with a view to bringing such sites into beneficial use. It can be imposed by planning authorities under certain conditions in designated areas 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.

The Council will examine lands within the City and County, as appropriate as part of its active land management strategy for the purposes as set out in the Urban Regeneration and Housing Act 2015, in relation to the Vacant Site Levy. The Vacant Sites Register is reviewed on an annual basis.

Objective 6D - To identify vacant sites where appropriate zoning applies and maintain a Vacant Sites Register in the plan area for the purpose of the Vacant Site Levy.

Objective 4C - To actively promote the redevelopment and renewal of areas in need of regeneration whether urban or rural through appropriate active land management measures during the period of the Plan.

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The site is zoned Business Park - To provide for commercial activity including industry, information technology-related industrial and office development and ancillary services and retail warehousing.

6.5 Active Land Management

6.5.1 Vacant Sites - The Council engages in active land management in order to incentivise the development of vacant or idle sites identified as “regeneration land” or “residential land”, with a view to bringing such sites into beneficial use. This ensures the maximising the impact of public funds and expenditure on infrastructure.

Volume 1, Section 6.6 Vacant Site Levy sets out the position as a whole for the City and County.

Objective C6G - To identify vacant sites where appropriate zoning applies and maintain and update a Vacant Sites Register in the plan area for the purpose of the Vacant Site Levy.

The Vacant Site Levy can be imposed by planning authorities under certain conditions in designated areas 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.

In the case of regeneration land the owner must at a minimum bring forward proposals to ensure the land is not having a negative impact on the character of the area.

The Council will continue to examine lands within the City and County, as appropriate as part of its active land management strategy for the purposes as set

out in the Urban Regeneration and Housing Act 2015, in relation to the Vacant Site Levy. The Vacant Sites Register is maintained and reviewed on an annual basis.

The levy may be applied to all identified 'Regeneration' land and 'Residential' land in existing land use zonings. Land in the residential category must be served by the public infrastructure and facilities to enable housing to be provided and serviced. In particular, the areas covered by the following zoning objectives are considered to constitute regeneration land:

- General Business
- Mixed Use
- Business, Industry and Technology Parks/Business Park
- Community Facilities

Other regeneration zonings may be identified in relevant Local Area Plans.

The building on the site is a protected structure and listed on the RPS under number identifier - RPS C475.

5.0 Planning History

5.1.1. Subject Site:

Site and part of:

PL10.240497 – Permission refused for a petrol station, restaurant with drive thru facility, discount retail unit, new access road from roundabout on the N10 motorway link, landscaping, parking, offices and signage.

PA Ref. 11/409 – Outline permission refused for new motorway services site comprising of (1) new access road from existing roundabout, (2) new service station and forecourt, (3) new drive-thru restaurant. The proposed was refused for the following reasons; (i) proposal would be premature in the absence of an A.A. or N.I.S., (ii) the proposal would adversely affect the optimum road infrastructure for the future development of the business park, (iii) in the absence of an Architectural Heritage Impact Assessment a grant of permission is premature.

PA Ref. **10/533** – Permission refused for the time extension of a planning permission (L.A. Ref. 04/1953). The permitted development included (a) refurbishment of Herbon Hotel for Hotel use, (b) new hotel with 158 bedrooms, (c) new conference centre, (d) new leisure centre, (e) new entrance from Herbon Road, (f) new estate road.

6.0 Planning Authority Decision

6.1. Register of Vacant Sites Report:

First report (20/11/2020) – Site inspection took place on the 11 November 2019, 28 October 2020. The site is greater than 0.05 Hectares, is zoned business park, site has been vacant for 12 months, house boarded up, site neglected and dumping on site.

Second Report (31/12/2020) – Submission received, site has been lying idle, permission for a filling station refused due to lack of services, rezoning of the lands will be sought. The site remains vacant and fulfils the criteria under regeneration lands, issue section 7(3) notice.

6.2. Planning Authority Notice

- 6.2.1. Kilkenny County Council advised the site owner that the subject site (Planning Authority site ref. VSR 21-2) is now liable for a payment of the levy for 2021, a total of €59,500.00. Payment terms and methods are outlined, the notice is dated 18 February 2022.
- 6.2.2. A Notice of Determination of Market Value was issued to Michael Kenny and others on the 6 September 2021 stating that the valuation placed on the site is €850,000 and instructions to make an appeal to the Valuations Tribunal.
- 6.2.3. A section 7(3) Notice issued on the 31 December 2020, advising the owner that their site had been placed on the register, accompanied by a site map.
- 6.2.4. A section 7(1) Notice issued on the 20 November 2020, advising the owner that their site had been identified as a vacant site and invited submissions, also accompanied by a site map.

7.0 The Appeal

7.1. Grounds of Appeal

7.1.1. The appellant has submitted an appeal to the Board, against the decision of Kilkenny County Council to enter the subject site on the Register and charge the levy. The grounds of the appeal can be summarised as follows:

- By way of background, the lands are currently in use for agriculture, grazing purposes. The lands are zoned for commercial purposes and despite contributions to the development plan drafting process, they remain so. The site cannot therefore be developed for housing. The new development plan for the area, identifies the need for new road connections to the N10 and open the lands for development.
- The demand has been incorrectly calculated, the PA calculate that the site amounts to 0.95ha, the appellant claims the site is 0.75ha and maps produced by the planning authority make it difficult to determine with certainty the extent of the site.
- VSR20-7 was withdrawn because the lands were in use for agricultural purposes. The appellant did not appeal the subsequent entry because they thought that a road realignment would be agreed and allow development to progress. It is noted that in the PA assessment forms that it is accepted that agricultural uses are present on the site.
- The site is remote from the public road and its condition does not affect the area, some dumping has occurred at the entrance to the site but not within the boundary of the site that sits in farmland. No antisocial behaviour has taken place or takes place on the site. There has been no reduction in the number of habitable houses in the area because of the status of the site.
- The site cannot be serviced and therefore it is not possible to develop the land at present.

The appellant has referenced section 5(1)(a) of the 2015 Act with regards to housing and residentially zoned sites in the grounds appeal.

7.2. Planning Authority Response

- 7.2.1. The owner was served with section 7(1), 7(3) and 12(4) notices all that were accompanied with maps, at no time was the site outline and area challenged. At various steps along the way there have been opportunities to contest the site boundary, none of these opportunities were taken. The maps issues by the planning authority are accurate and the site is idle.
- 7.2.2. The site is on land zoned business park, as such the criteria under section 5(1)(b) apply. The condition of the farmhouse at a prominent location at the entry to Kilkenny has an adverse impact on the area. The owner's submission in relation to rezoning the lands, states that the site suffers from vandalism because it has suffered from neglect. Infrastructural services are not a criteria for inclusion under regeneration sites.
- 7.2.3. The site is zoned for business park and is within the development boundary of Kilkenny and has been for some time.

7.3. Further Response

- 7.3.1. The appellant has submitted a response to the planning authority's submission, as follows:
- 7.3.2. The calculation of the levy should be based upon an accurate assessment of the area of the site; 0.39ha (house and surrounds) and 0.37ha (outbuildings and walled garden), 0.76ha in total. The site area at 0.96ha is incorrectly calculated and valuation per hectare is therefore incorrect. The site area arrived at by the planning authority is incorrect and it is this aspect of the calculation that is challenged.
- 7.3.3. The site has no adverse effects on the character of the area. The site and the buildings thereon are so far removed from the public road that they cannot be seen.
- 7.3.4. The house is in a neglected condition and activities occur in the vicinity of the site that are beyond the owner's control. The inaction of the Council to agree the route of roads in the area has prevented development.
- 7.3.5. The site is not serviced in any form, it is a rural site removed from the urban area of the town. The development boundary of the city has been notional for years, and the site has not been developed since it was zoned for commercial purposes.

8.0 Assessment

8.1. Introduction

8.1.1. This current 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, the site is no longer a vacant site as of the 1st of January in the year concerned, in this case 2021. The appellant has made a strenuous case why the site should not have been included on the register in the first place.

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 31 December 2020. No Section 9 appeal was made to the Board. The appellant makes the case that a previous attempt to place the site on the register was withdrawn because the site was in use for agriculture, planning authority reference VSR20-7 refers. The current entry VSR21-2 was not appealed because the appellant believed that a route for new roads in the area would be agreed and development could then begin. In this respect I note that permission for development on part of the site was refused (in 2013) because a road layout had not been determined for the area, ABP reference PL 10.240497 refers.
- 8.3.2. The appellant acknowledges that the building (a house) is in a poor condition and not in use, but that the balance of the site is in use for agriculture, in particular, grazing. In terms of use, the appellant advances the case that the site is and was in use for

agriculture and that the planning authority have already acknowledged this fact in the assessment forms for placing the site on the register. This is the most salient issue raised by the appellant. The appellant also points out that the site does not meet any of the criteria set out in section 5(1)(b) and augmented by section 6(6) of the 2015 Act. The appellant explains that parts of the site are neglected and antisocial behaviour may be occurring, but such matters do not have an adverse affect on the character of the area. According to the appellant, the primary reason for the lack of any affects is because of the distance of the site from the public road and its apparent invisibility, the planning authority disagree.

8.3.3. The site was initially placed on the register in December 2020 and the majority of the site was considered vacant for the period of twelve months prior to that date. A section 7(1) notice issued in November 2020, for which the assessment report prepared by the planning authority noted that the site was not idle/vacant and that it was not in use for agriculture. The subsequent report, prior to placement on the register, noted no use for the site. The appellant has highlighted inconsistencies between the assessment of the current case and the reasons why the site was previously withdrawn from placement on the register.

8.3.4. However, I note the submission made by the owner during the registration process and dated 22 December 2020 makes no reference to any active use and in fact states that the site has been lying idle for some time. The planning authority took into account the submission to the section 7(1) notice and proceeded to place the site on the register on that basis. 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 regeneration land. The owner elected not to appeal this decision of the planning authority, but did make a submission that aspired to the development of the site in the future. I am satisfied that the site was correctly assessed as being vacant or idle, a fact declared by the owner in their submission on foot of the section 7(1) notice.

8.3.5. Once considered to be vacant or idle, the process of placing a site on the register requires further assessments to be made and these relate to the following criteria:

- (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,

8.3.6. So, if it is agreed that the site is vacant, which I agree that it was and continues to be, then it must be established if the matters above were affected by the existence of such vacant or idle land, and if this resulted in adverse effects on public infrastructure or character of the area. The planning authority agree that these factors have been met and placed the site on the register. The owner did not appeal, but now, after failing to have the lands rezoned, feels that the site should not have been entered in the first place.

8.3.7. Section 8.2 of my report above, briefly poses the question what pathway the Board have to go back and revisit the reasons why the site was placed on the register in the first place. In situations where the process and methodology of placing a site is in question, then I think that the Board has a role to play and ensure that the correct procedures were followed, and the owner provided with the opportunity to fully engage. In this instance, I find this to be completely satisfactory, the owner made a submission on foot of a section 7(1) notice and elected not to appeal the decision of the Board. This would indicate to me that the owner accepted the vacant nature of the site and that it should be placed on the register. However, now the appellant raises questions about the planning authority's analysis and points out that the condition of the site does not affect the character of the area or impact on any public infrastructure and facilities. Arguably this could well be the case, the boarded up and effectively derelict farmhouse set amidst farmland does not really impact on the rural character of the area. Yes, the farmhouse is readily visible, it commands the landscape around it, but it does not in my mind adversely affect the character of the area and no public infrastructure or amenities are reduced because of its vacant status and condition. Any reduction in the number of habitable houses in the area as a result of the vacant site has not been proven either way by the appellant of planning authority.

8.3.8. That being so, the wording of the 2015 Act is instructive here, a section 18 appeal against demand for payment of levy states:

(2) On an appeal under this section the burden of showing that—

(a) the site was no longer a vacant site on 1 January in the year concerned is on the owner of the site.

In my mind, part (a) clearly means that a change in circumstances must have occurred to remove the site from the register and cancel the charge. In this instance, nothing has altered, the house is still as it was, and a definite use has not been advanced by the appellant. Reference is made to some form of grazing on the site, however, the Board should not view this as a productive use as sought by Department of Housing, Planning and Local Government (the Department) circulars PL 7/2016, PL 04/2018 and PL 06/2018. I note that the appellant has at times, referred to residentially zoned lands and the criteria that relates to same. To be clear, the 2015 Act and the Department circulars make clear the distinction between residential and regeneration lands. However, the imperative of the 2015 Act is to bring into productive use zoned and serviced land whether it be residential or regeneration land. I am not satisfied that a change in circumstance for the lands such as grazing is what was envisioned by the 2015 Act and it should be rejected as any sort of beneficial use for land zoned for commercial purposes. I am satisfied that the site was entered onto the register as a vacant site under the criteria of a regeneration site and the planning authority used the proper mechanisms to do so.

8.3.9. The appellant has made a number of references to the provision of housing on the site and how this is impossible due to the zoning of the site and the lack of services. However, these matters have no place in the case of a regeneration site that has a different assessment criteria. Additionally, the appellant has challenged whether the site could be considered a regeneration site when it is effectively a rural farmstead amidst productive agricultural land. On the face of it, this may appear to be so, but the planning authority point out that the lands have been zoned for development for some time and consequently form the development boundary of Kilkenny. A factor that the appellant sought to alter, when they engaged in the development plan process to change the zoning of the lands in question to mixed use purposes.

8.3.10. The site is zoned business park in the current plan and in the previous development plan. Variation 4 to the 2014 plan, the relevant plan for the purposes of the current site, states that the levy may be applied to all identified 'Regeneration' land and 'Residential' land in existing land use zonings. In this case, business park is one of

those land use zonings specifically identified to be considered for the purposes of the levy and regeneration lands. The same objective for the site and its surrounds is carried through to the current plan. In my mind this allows the planning authority to consider the site in question appropriate for inclusion on the register despite its farming character and appearance. I am satisfied that the site can be considered a regeneration site and placement on the register was completed in the proper manner according to section 5(1)(b) of the 2015 Act and the operative statutory development plan for the area.

8.4. The site is no longer vacant as of the 1st of January 2021

- 8.4.1. The appellant has questioned whether the site should have been placed on the register in the first place and section 8.3 of my report responds in detail that the site is a vacant site for the purposes of the 2015 Act. The only ground of appeal that addresses the matter of being no longer vacant is that the grazing use should be taken into account. As in section 8.3 above, I considered that a grazing use would not be a productive or beneficial use for a site zoned to provide for commercial activity including industry, information technology-related industrial and office development and ancillary services and retail warehousing. Unlike a residentially zoned site in which pre-existing uses such as agriculture could be considered, if certain ownership and zoning conditions are met, section 5(1)(a)(iii)(II) refers, however the subject site is a regeneration site and these conditions do not apply.
- 8.4.2. In this instance, I have not seen any information on the file that would lead me to conclude that on the 1 January 2021 anything had changed in relation to the site to avoid a demand for payment and the site would stay on the register. Likewise, matters seem to have remained the same for the date on which the appeal was made.

8.5. Levy Calculation

- 8.5.1. A Notice of Determination of Market Value was issued to Michael Kenny and others on the 6 September 2021 stating that the valuation placed on the site is €850,000. No evidence from the appellant has been submitted to show that this valuation was appealed to the Valuation Tribunal.

- 8.5.2. A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to Michael Kenny and others on the 18 February 2022 for the value of €59,500.00.
- 8.5.3. The appellant, however, seeks to challenge the calculation of the levy based upon their premise that the site area has not be measured correctly. In the view of the appellant and based upon the reading of maps received by them a much smaller area should be valued and hence the calculation is incorrect. The appellant measured the site as follows; 0.39ha (house and surrounds) and 0.37ha (outbuildings and walled garden), 0.76ha in total, a drawing has been supplied by the appellant to illustrate the site boundary as they see it. I observe that the site boundaries outlined by the appellant differ from the maps produced by the planning authority and it is clear to me that a larger site area comprises the site. It is highly probable that the site area as defined by the planning authority amounts to 0.96ha and the planning authority confirm this.
- 8.5.4. Irrespective of the matters raised by the appellant now, with reference to site area and valuation calculation, the time to address such matters has passed. The planning authority rightly point out that any grievance about the site valuation should have been taken out at the appropriate time, under section 13 of the 2015 Act. The market value determination was issued on the 6 September 2021, and the owner had up to 28 days after this date to lodge an appeal with the Valuation Tribunal. As far as I know, no appeal was made and so the market value of the site stands. The valuation was carried out with regard to the extent of the site outlined by the planning authority and so there can be no error with how the calculation of the levy has now been arrived at.
- 8.5.5. 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.

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 2021 and was a vacant site on 21st 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 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 2021, or that the amount of the levy has been incorrectly calculated in respect of the site by the planning authority, and the site continued to be a vacant site on the day that the appeal was made.

The demand for payment of the vacant site levy as calculated by the planning authority under section 15 of the Urban Regeneration and Housing Act 2015, as amended, is, therefore, confirmed.

Stephen Rhys Thomas
Senior Planning Inspector

10 November 2022