



An
Bord
Pleanála

Inspector's Report ABP-314345-22

Type of Appeal	Appeal against a Section 18 Demand for Payment.
Location	Granges Road, Kilkenny.
Planning Authority	Kilkenny County Council.
Planning Authority VSL Reg. Ref.	VSR19-08.
Site Owner	Glenveagh Homes Limited.
Planning Authority Decision	Demand for Vacant Site Levy.
Date of Site Visit	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 €140,000 for vacant site lands at Granges Road, Kilkenny, and identified as VSR19-8. The notice was issued to Glenveagh Homes Limited and dated 14 July 2022. The owner Glenveagh Homes Limited have 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 26 April 2022. The value of the subject site is stated to be €3,500,000. An initial Notice of Determination of Market Value was issued to Anthony McCarthy and Brendan McCarthy of McCarthy Brothers Limited and Patrick Tyrell on the 13 May 2019 stating that the valuation placed on the site is €2,000,000.
- 1.3. A Notice of Proposed Entry on the Vacant Sites Register was issued to McCarthy Brothers and others on the 20 November 2018. On the 31 December 2018, the Notice of Entry on the Vacant Sites Register was issued to McCarthy Brothers and others. This section 7(3) notice was not appealed to the Board.

2.0 Site Location and Description

- 2.1. The site is on the western side of Kilkenny City. It has an area of c4.2ha. Its eastern boundary is along the rear of houses that front onto Grange Road, which is a main road, opposite the Kilkenny Greyhound Stadium. The northern and southern boundaries are not defined and abut agricultural fields. The western boundary is made up of a mature hedge line. The adjoining lands to the north, south and west are undeveloped.

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 the 2015 Act. A section 7(3) Notice was issued 31

December 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. 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 were zoned as “Phase 1 Residential”.

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.

- 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. Volume 2 of the plan refers to the city. The site is zoned New Residential on Figure CS4 Kilkenny City Zoning map.

5.0 Planning History

5.1. Subject Site:

- 5.1.1. PA ref **21464** – Phase 2 of a residential development consisting of the construction of 60 no. residential units and all ancillary development works including access, footpaths, parking, drainage, landscaping and amenity areas. The proposed development will allow for the laying of all roads and services for the Phase 1 and Phase 2 site. Access to the site will be via the existing entrance onto Granges Road to the east of the site and a new pedestrian and cycle access onto Lousybush Lane. This development will form part of a larger two-phase development at this location.
- 5.1.2. PA ref **21384** - Phase 1 of a residential development consisting of the construction of 87 no. residential units, 1 no. childcare facility and all ancillary development works including access, footpaths, parking, drainage, landscaping and amenity areas. The proposed development will allow for the laying of all roads and services for the Phase 1 and Phase 2 site. Access to the site will be via the existing entrance onto Granges Road to the east of the site and a new pedestrian and cycle access onto Lousybush Lane. This development will form part of a larger two-phase development at this location.

6.0 Planning Authority Decision

6.1. Register of Vacant Sites Report:

6.1.1. First Report 19 November 2018. Site inspection 9 October 2018. Site is zoned residential, is on a location in need of housing, site is suitable for housing and site not in agricultural use.

6.1.2. Second Report 21 December 2018. Submission on foot of section 7(1) notice summarised; vacant site to be split into two separate sites to correspond with ownership. If ownership changes, a zero charge will apply.

6.2. Planning Authority Notice

6.2.1. Kilkenny County Council advised the site owner that the subject site (Planning Authority site ref. VSR 19-8) is now liable for a payment of the levy for 2021 of €140,000. Payment terms and methods are outlined.

6.2.2. A Notice of Determination of Market Value was issued on the 13 May 2019 stating that the valuation placed on the site is €2,000,000 and instructions to make an appeal to the Valuations Tribunal. A further valuation pertaining to the site was issued by Kilkenny County Council on the 26 April 2022. The value of the subject site is stated to be €3,500,000.

6.2.3. A section 7(3) Notice issued on the 31 December 2018, 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 2018, 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 landowner has submitted an appeal to the Board, against the decision of Kilkenny 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 should not have been included on the register as it cannot be served by public infrastructure, section 6(5)(b) of the 2015 Act is not met. As part of the now expired LAP, a new trunk sewer that would run along an inner relief road that would have served these and other lands. None of this infrastructure has been delivered. Despite this, recent planning permissions have secured

an alternate sewer connection, however, Irish Water demand that the existing network must be upgraded to accommodate new development. The site should not be included on the register because it is not served by the public infrastructure necessary to accommodate housing.

- Permission has been granted for over 140 housing units, despite an appeal that was subsequently withdrawn. The owner has at all times attempted to progress the delivery of housing in accordance with the aim of the 2015 Act.

The appeal is accompanied by the demand letter, ABP correspondence and an IW pre-connection enquiry dated April 2021.

7.2. Planning Authority Response

- Other sites in the area closer to the town centre are not included on the register and the reason for this is that the owner at the time clarified that these lands were in agricultural use. Subsequently, the boundaries of the vacant site were amended when the section 7(3) notice was issued.
- The site can be serviced, an access route has been established by permission PP17/444 onwards to the Granges Road.

7.3. Further Response

7.3.1. The appellant has submitted a response to the planning authority's submission, as follows:

- The planning authority highlight why folio ref KK11462 was not included on the register because it was in agricultural use. This site provides the only access to services for the subject site and if in agricultural use were not available for development and cannot be relied upon to provide access. Folio ref KK11462 and KK27603F (the subject site) were farmed as a single field according to satellite imagery.
- Disagreement remains as to the serviceability of the site and it is too simple to suggest that access to services can be gained from the nearest public road.

The appellant reiterates their claim that the site does not qualify as a vacant site as it cannot be serviced therefore it should not have been placed on the register in the first place.

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.

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)(a) 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 not advanced any actual use for the site during the time period concerned and instead relies on the claim that the site cannot be serviced and so therefore should never have been placed on the register, section 6(5)(b) of the 2015 Act is referenced.

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 2018. No Section 9 appeal was made to the Board. The appellant makes the case that they purchased the site in 2020 and so, had no involvement in the process of placing the site on the register. However, the appellant contends that the site should never have been placed on the register in the first place because the site cannot be serviced, section 6(5)(b) of the 2015 Act refers. Much is made of the failure to implement the former LAP for the area that would have provided a trunk sewer combined with an inner relief road and in the absence of that infrastructure Irish Water require network upgrades in order to accommodate new development at this location. The appellant maintains that the site is not entirely suitable for the provision of housing.

- 8.3.2. The site was initially placed on the register in December 2018 and the majority of the site was considered vacant for the period of twelve months prior to that date. Since that date the lands have changed ownership and permission has been granted for residential development, planning authority reference numbers 21464 and 21384 both refer. The appellant partially agrees that the site is suitable for housing and that there is a need for housing in the area, but the lack of adequate public infrastructure is a barrier to development. The planning authority disagree and note the extant permissions for the site without any restriction on development.
- 8.3.3. A section 7(1) notice issued in November 2018, for which the assessment report prepared by the planning authority noted that the site was idle/vacant and that it was not in use for agriculture. The subsequent report, prior to placement on the register, noted no agricultural use for the site. However, I note that submissions made by the owner during the registration process clarified ownership and that a farming use was carried out on part of the lands concerned. This is the reason for the rationalisation of VSR19-P to the boundaries of the appeal site now before the Board, that is VSR19-08. The appellant raises no issue in this regard, but reiterates their contention that the site cannot be served by the public infrastructure and facilities. I cannot agree with this viewpoint as permission has been granted for two separate planning applications with no conditions that restrict or phase development dependent on the delivery of infrastructure, namely water services. I do note, however, that Irish Water have confirmed that development of the lands is feasible without infrastructure upgrade. These comments are supported by site specific comments that detail the need for network upgrades especially at the point and scope of connection to the sewer network along Granges Road. This does not halt the development of the site it simply requires greater detail to establish the extent of upgrades as necessary. It is unfortunate that the development of the LAP lands has not advanced at such a pace as to deliver new roads and water services infrastructure. Be that as it may, permission has been granted for development and Irish Water declare that service connection is feasible without upgrade but subject to local enhancement and this would not be unusual for the scale of development permitted.
- 8.3.4. I am of the view that the site is entirely suited for housing and this is illustrated by the extant permissions for housing on the lands concerned. Moreover, there is a need

for housing in the area, a matter the appellant does not contest and that the site was vacant/idle for the period concerned. I am satisfied that the lands were entered onto the register in accordance with the criteria set out in section 5(1)(a) of the 2015 Act and that there is no reason for the removal of the site based upon the premise advanced by the appellant around the suitability of the site for the provision of housing not being met.

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 and concludes that the site is a vacant site for the purposes of the 2015 Act. The appellant has not advanced an actual use for the site but puts forwards reasons why the site is not suitable for the provision of housing. The planning authority clarify why other sites were not included on the register because of their ongoing farming use and are satisfied that the site in question was and is not in use for farming. The appellant points to satellite imagery to show that the site was an integral part of wider agricultural lands in the area and was being actively farmed, the images are dated 2019. If the provenance and accuracy of the images submitted by the appellant can be taken as read, this would mean that the lands were indeed in use in 2019. However, the charge levied by the planning authority is for 2021 and there is no information on file to demonstrate a use for the site for the period concerned. On the day of my site visit I observed no obvious signs of agricultural use with all the indications that the lands have lain fallow.
- 8.4.2. In this instance, I have not seen any information on the file that would lead me to conclude that on the 1st January 2021 the site was in use for agriculture and avoid a demand for payment and the site should 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. The most recent Notice of Determination of Market Value was issued to Glenveagh Homes Limited on the 26 April 2022 stating that the valuation placed on the site is €3,500,000. No evidence from the appellant has been submitted to show that this valuation was appealed to the Valuation Tribunal. I note that the demand for

payment was issued on the 14 July 2022, more than 28 days after the market valuation of the site was issued by the planning authority.

- 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 Glenveagh Homes Limited on the 14 July 2022 for the value of €140,000.00.
- 8.5.3. The planning authority issued a Notice of Determination of Market Value to Anthony McCarthy and Brendan McCarthy of McCarthy Brothers Limited and Patrick Tyrell on the 13 May 2019 stating that the valuation placed on the site is €2,000,000. It is apparent that the calculation of the demand for payment rests on this earlier valuation rather than the more recent valuation issued to Glenveagh Homes Limited in 2022. This is a logical assumption given that the levy is charged for a period prior to the updated market valuation of 2022, this is explained by the planning authority in their notice of demand for payment dated July 2022. I am satisfied that this is an acceptable approach to take and I find that the calculation of the levy due is accurate and correct based upon the 2019 valuation and for the period concerned 2021. The appellant has raised no issue with regard to the calculation of the levy demanded.
- 8.5.4. 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 10th of August 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

22 December 2022