



An
Bord
Pleanála

Inspector's Report ABP-314354-22

Type of Appeal	Appeal against a Section 18 Demand for Payment.
Location	John's Green, County Kilkenny.
Planning Authority	Kilkenny County Council.
Planning Authority VSL Reg. Ref.	VSR20-12.
Site Owner	Green Wolf Limited.
Planning Authority Decision	Demand for Payment.
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 €52,500 for vacant site lands at John's Green, County Kilkenny, and identified as VSR20-12. The notice was issued to Green Wolf Limited and dated 14 July 2022. The owner Green Wolf Limited 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 22 September 2020. The value of the subject site is stated to be €750,000.
- 1.3. A Notice of Proposed Entry on the Vacant Sites Register was issued to City Cinemas Limited the 21 November 2019. On the 31 December 2019, the Notice of Entry on the Vacant Sites Register was issued to City Cinemas Limited. This section 7(3) notice was unsuccessfully appealed to the Board.

2.0 Site Location and Description

- 2.1. The site is located in the centre of Kilkenny City at John's Green. Wolfe Tone Street runs along the southern boundary of the site and a large public square, John's Green, is located to the east. The former Waterford and Maryborough Branch railway line, which is elevated, forms the rear or northern boundary to the site. Commercial buildings and a factory outlet are located to the west of the site. A high and notable coursed stone wall provides the southern and eastern boundaries to the public realm. There are two buildings of note on site, a gate lodge and the former County Infirmary, both have their windows neatly boarded up but the overall site shows signs of lengthy inactivity. The overall site has been cleared and there are a number of planted areas and mature trees. The site interior and the buildings on site are readily visible from the street.

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 2019 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 'General Business' with the objective: "To provide for general development." The site is located within the Michael Street and Wolfe Tone Street Architectural Conservation Area. The existing building on the site is a protected structure (RPS Ref. B1120). The plan includes the following objective regarding St. John's Green: MSACA 3: To promote the restoration and appropriate re-use of derelict or vacant buildings, particularly the 18th century Infirmary building on John's Green.

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 General Business on Figure CS4 Kilkenny City Zoning map.

5.0 Planning History

5.1. Vacant Site History:

ABP-**303495**-19 - Is not a Vacant Site

ABP-**306517**-20 – Confirmed entry on the vacant site register

5.2. Planning Applications:

Planning Application Reference **21/32** and ABP-**310749**-21 - Construction of 123 bed Hotel with Public Bar and Restaurant and extensions. The site includes a former hospital which is a Protected Structure (RPS Ref B112). No decision to date.

Planning Application Reference **04990079** - Permission granted in February 2005 for a development comprising the demolition of the existing two-storey section at the eastern end and minor extensions at the western end of the existing hostel (a protected structure), demolition of boundary wall and gate lodge and relocation of entrance gateway (protected structures), and construction of a four-storey development comprising 32 apartments with balconies (11 no. 1-bedroom, 21 no. 2-bedroom), with three retail units at ground level over a basement carpark and change of use of the hostel with construction of a four-storey extension thereto to provide 12 no. apartments (4 no. 1-bedroom and 8 no. 2-bedroom, 4 of which have balconies).

Planning Application Reference **029900025** - Permission granted in November 2005 for a development consisting of demolition of extension and gate lodge to a building of local importance, erection of a hotel on the site incorporating existing hostel, to consist of three storeys with recessed penthouse floor on John's Green and 2 storeys with recessed penthouse floor on Wolfe Tone Street with basement level for car parking, with services under, provision of 108 bedrooms with associated leisure centre and restaurant, bars and conference facilities.

Planning Application Reference **9990117** - Permission refused in July 2000 to demolish extensions and gate lodge to a building of local importance to erect a hotel on site incorporating existing hostel to consist of 4 storeys over ground and basement for car parking and services under, provision of 125 houses, with associated leisure centre and restaurants, bars and conference facilities.

Nearby Sites: Planning Application Reference **15/76** Demolition of a commercial building and construction of a 10 screen multiplex cinema and all ancillary site development works. Granted November 2015.

6.0 Planning Authority Decision

6.1. Register of Vacant Sites Report:

- 6.1.1. A Vacant Site Report (19.11.2019) was prepared for the site outlining the dates of the visits to the site, zoning and the type of site for the purposes of the Act which in this case is Regeneration. The following key points are noted: Site visits were undertaken on the 9th of October 2018 and the 5th of November 2019. Photographs accompany the report. Site has an adverse effect on the character of John's Green.
- 6.1.2. A further Planning Report was prepared (31.12.2019). This report noted: the site continues to be a vacant site for the duration of the 12 months concerned. Photographs accompany the report. It recommended that the lands should be included on the Vacant Sites Register and that a section 7(3) Notice be issued.

6.2. Planning Authority Notice

- 6.2.1. Kilkenny County Council advised the site owner that the subject site (Planning Authority site ref. VSR 20-12) is now liable for a payment of the levy for 2021 of €52,500.00 Payment terms and methods are outlined.
- 6.2.2. A Notice of Determination of Market Value was issued on the 22 September 2020 stating that the valuation placed on the site is €750,000 and instructions to make an appeal to the Valuations Tribunal.
- 6.2.3. A section 7(3) Notice issued on the 31 December 2019, 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 21 November 2019, advising the owner that their site had been identified as a vacant site and invited submissions, also accompanied by a site map. The notice references section 7(1) of the 2015 Act.

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 charge the levy. The grounds of the appeal can be summarised as follows:

- Permission was granted by the planning authority for re-development of the site in June 2021, however, a third-party appeal has sat with the Board for over a year and a decision is yet to issue.
- The lands should not be considered as a vacant site under section 5(1)(b) of the 2015 Act. The site is not currently used but it does not adversely impact the amenities or character of the area, the land/structures are not in a ruinous or neglected state, no antisocial behaviour occurs and there has not been a reduction in the number of habitable houses in the area. The site is not a vacant site as set out by section 5(1)(b)(ii) of the 2015 Act.

7.2. Planning Authority Response

- General maintenance works advised to be carried out have been completed, however, the site lacks ongoing maintenance and care, and it is for these reasons that the levy has been charged.
- Absence of antisocial behaviour taking place, noted.
- The number of people living in the area has fallen and so too has housing – population down by 10 persons and housing by two units.

7.3. Further Response

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

- A planning permission is awaiting a decision from the Board and the owners were not aware that works detailed by the planning authority could have removed the site from the register. In any case maintenance works have been carried out and the appearance of the buildings has been improved, photographs dated September 2022 are included. A comprehensive list of maintenance works is included, vegetation removal out of bird breeding season, hoardings replaced where needed and slates replaced. The site is in good condition and properly maintained as advised by the planning authority.

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, 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. Is it a Vacant Site?

8.3.1. A Section 7(3) Notice of Entry on the Vacant Sites Register was issued on the 31st December 2019. A Section 9 appeal was made to the Board and was unsuccessful. The site was placed on the register because of the vacant and idle nature of the site and that the resultant adverse effects on the character of the area stemmed from the neglected condition of buildings thereon, ABP-306517-20 refers. That decision was made in June 2020 and since that date the lands have been acquired by the current owners.

8.3.2. The appellant has questioned whether the site should have been placed on the register in the first place. The appellant notes that the site has no use at present but that its good condition, well maintained grounds, lack of antisocial behaviour and no impact on the number of homes in the area, are all reasons why the site fails to meet all the criteria set out by section 5(1)(b)(ii) of the 2051 Act. In my view, this may have been the case at the time that the levy was demanded but not so at the time that the site was placed on the register. I am guided by the detailed report of the Inspector

and the decision of the Board that placed the site on the register, ABP-306517-20 refers. I am satisfied that the site was correctly placed on the register in accordance with the requirements of the 2015 Act and that there is no reason to re-examine this process.

- 8.3.3. The site was initially placed on the register in December 2019 and the majority of the site was considered vacant for the period of twelve months prior to that date. 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 unsuccessfully appealed the decision of the planning authority to the Board and the site stands on the register. I am satisfied that the site was correctly 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.

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

- 8.3.4. The appellant has set out a list of maintenance works that have been carried out since they took ownership of the property. These works include vegetation clearance out of bird breeding season, hoarding and roof slate replacement where necessary. The appellant has supplied photographs to illustrate the condition of the site and concludes that the majority of the site cannot be viewed from the public realm and so no impact on the character of the area results. The planning authority note these upkeep works but argue that on the day of their site visit, vegetation had regrown, and the gate lodge window hoardings were in need of maintenance.
- 8.3.5. The appellant has not advanced any use for the site and relies on the condition of the buildings on site and the ongoing maintenance that occurs thereon. According to the appellant, no antisocial behaviour takes place on site and there has not been a reduction in homes or people living in the area. The planning authority disagree and state that there has been a drop in the number of homes available and population has slightly reduced too.
- 8.3.6. It is clear that the site is idle, it has no use and this has been admitted by the appellant. The next question to arise in relation to a section 18 appeal is whether anything has changed, and the site is no longer a vacant site as defined by the 2015 Act. In this instance, I can see that the maintenance regime, as directed by the

planning authority has been implemented by the new owners. The planning authority seek a greater regularity of upkeep and the appellant admits that ongoing discussions have been had in this regard. In addition, the appellant is still awaiting the outcome of a planning appeal to develop the site, which they are eager to enact. The appellant states that matters have changed and the site no longer fulfils the criteria for a vacant site.

- 8.3.7. I observed that the condition of the site has improved, the site shows the signs of regular upkeep and the impact of the site as it now stands, on the character of the area is benign. I accept that antisocial behaviour does not take place on the site. However, the planning authority point out that during the last intercensal period (2011-2016) the number of homes has dropped by 2 and the population has fallen by 10 persons. This would mean that under section 6(6)(c) there has been a reduction in the number of habitable houses, or the number of people living, in the area. It is extremely difficult to attribute this marginal fall in population and housing stock to the existence of such vacant or idle land, when there are other sites in the vicinity that may or may not also contribute to such a decline. Of more relevance is the reliance on relatively older census data (2011-2016) and it may well be the case that population and housing stock has increased based upon new residential development in the wider area. I consider that it would be unreasonable to attribute a historic and marginal decline in housing and population in the area solely on this idle property.
- 8.3.8. I am satisfied that even though the site was and is idle and has no use, the lands are not ruinous or neglected, antisocial behaviour is not a feature and the marginal decline in habitable house or persons in the area may not be affected by the existence of this vacant or idle land. The condition of the site has improved since it was placed on the register, and although the lands are idle I am satisfied that they no longer meet all the criteria set out in section 5(1)(b)(ii) and expanded by section 6(6) of the 2015 Act, thus the lands are no longer a vacant site for the year concerned or at the date of the appeal. However, as this is a question of property maintenance and upkeep, it lies with the planning authority to decide if the site should again be placed on the register should matters deteriorate.

8.4. **Levy Calculation**

- 8.4.1. A Notice of Determination of Market Value was issued on the 22 September 2020 stating that the valuation placed on the site is €750,000. No evidence from the appellant has been submitted to show that this valuation was appealed to the Valuation Tribunal.
- 8.4.2. A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued on the 14 July 2022 for the value of €52,500.
- 8.4.3. 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 cancel the Notice of Demand for Payment of Vacant Site Levy as the site was no longer a vacant site on the 1st of January of 2021 and on the 10th of August 2022, the date on which the appeal was made. The demand for payment of the vacant site levy under Section 15 of the Urban Regeneration and Housing Act 2015 is, therefore, cancelled. 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.

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 site being idle, but because of the upkeep and maintenance works to the subject lands, had and have stopped adverse effects on the character of the area,

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, cancelled.

Stephen Rhys Thomas
Senior Planning Inspector

22 December 2022