



An
Bord
Pleanála

Inspector's Report ABP-314582-22

Type of Appeal	Appeal against a Section 18 Demand for Payment.
Location	Ravensdale, Leixlip, Co. Kildare.
Planning Authority	Kildare County Council
Planning Authority VSL Reg. Ref.	VS/LEIX-05
Site Owner	Maridan Property Limited.
Planning Authority Decision	Demand for payment of Vacant Site Levy.
Date of Site Visit	30 November 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 Kildare County Council, stating their demand for a vacant site levy for the year 2020 amounting to €259,000 for vacant site lands at Ravensdale, Leixlip, Co. Kildare, and identified as VS/LEIX-05. The notice was issued to Maridan Property Limited and dated 16 August 2022. The owner Maridan Property 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 Kildare County Council on the 20 August 2021. The value of the subject site is stated to be €3,700,000.
- 1.3. A Notice of Proposed Entry on the Vacant Sites Register was issued to Maridan Property Limited on the 10 November 2020. On the 18 December 2020, the Notice of Entry on the Vacant Sites Register was issued to Maridan Property Limited. This section 7(3) notice was not appealed to the Board.

2.0 Site Location and Description

- 2.1. The site is located within the Leixlip urban area and a short distance from Leixlip Main Street. The lands are accessed by a road from Knockaulin to the south and there is additional site frontage onto Station Road to the north. To the south of the site is Knockaulin, a housing development of detached houses. To the west are the grounds associated with adjoining schools and to the north is a short cul-de-sac with detached houses backing onto the site. The site is currently under construction for houses, with some units near completion.

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 residential vacant site within the meaning of the 2015 Act. A section 7(3) Notice was issued 18 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. Kildare County Development Plan 2017 – 2023

4.1.1. Objective **EO 22** - Promote the sustainable development of vacant residential and regeneration sites in towns that are the subject of a statutory Local Area Plan, through the application of the Urban Regeneration and Housing Act 2015, Vacant Site Levy, on lands zoned for Town Centre, Regeneration and Residential uses.

4.2. Leixlip Local Area Plan 2020 – 2023 (as extended)

4.3. The site is located on lands subject to zoning objective B: Existing / Infill Residential - To protect and enhance the amenity of established residential communities and promote sustainable intensification.

4.4. **Kildare County Development Plan 2023 - 2029**, At a special meeting of Kildare County Council on 9th December 2022, the Elected Members of Kildare County Council voted to adopt the Kildare County Development Plan 2023 - 2029. The Kildare County Development Plan 2023 - 2029 will come into effect on 28th January 2023 and will be available to view after that date.

5.0 Planning History

5.1. Subject Site:

5.1.1. PA ref **21/655** – permission for 57 dwellings.

5.1.2. PA ref **20/1300** – permission refused for 63 dwellings.

- 5.1.3. PA ref **19/6** and ABP ref **ABP-305284-19** – Permission refused for the demolition of existing agricultural sheds and front boundary wall and the development of 33 residential units.

6.0 Planning Authority Decision

6.1. Register of Vacant Sites Report:

- 6.1.1. First Report. Site inspection 21/05/2020 and 23/10/2018. Site is zoned residential, is at a location in need of housing and the site is suitable for housing. Site is vacant.
- 6.1.2. Report Date 22 July 2020. Site is zoned residential and in accordance with the housing strategy and core strategy of the development plan, the site is located at a location in need of housing.
- 6.1.3. Second Report 9 November 2020. No submission on foot of section7(1) notice received. Site inspections 23/10/18 and 21/05/20. Site is zoned residential, is at a location in need of housing, site is suitable for housing and is vacant.

6.2. Planning Authority Notice

- 6.2.1. Kildare County Council advised the site owner that the subject site (Planning Authority site ref. VS/LEIX-05) is now liable for a payment of the levy for 2020 of €259,000, dated 16 August 2022. Payment terms and methods are outlined.
- 6.2.2. A Notice of Determination of Market Value was issued on the 20 August 2021 stating that the valuation placed on the site is €3,700,000 and instructions to make an appeal to the Valuations Tribunal.
- 6.2.3. A section 7(3) Notice issued on the 18 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 10 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 landowner has submitted an appeal to the Board, against the decision of Kildare 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 lands could not be developed until permission was granted (8 December 2021), a connection agreement from Irish Water (5 months later).

The appeal is accompanied by the demand letter, BCMS commencement notice dated 7 June 2022, Irish Water correspondence, valuation appeal documentation, site photos, notification to grant permission and numerous correspondence with Kildare County Council.

7.2. **Planning Authority Response**

7.2.1. None, all details already submitted.

7.3. **Further Response**

7.3.1. None sought.

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 2020. The appellant has not advanced any actual use for the site during the time period

concerned and instead points out that before development could occur on the site, planning permission had to be obtained.

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 18 December 2020. No Section 9 appeal was made to the Board. The appellant has not questioned whether the site should have been placed on the register in the first instance. No issues are raised in relation to the vacant or idle status of the site during the assessment period, 2020. In addition, there is no dispute about whether there is a need for housing or if the site is suitable for housing. In this context, I note that permission has been granted for a housing scheme that is already commenced.

8.3.2. To conclude, 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. The assessments made 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 residential land. The owner at the time, elected not to appeal this decision of the planning authority. I am satisfied that the site was correctly entered onto the register as a vacant site under the criteria of a residential site and the planning authority used the proper mechanisms to do so. The lands were vacant at the time of placement on the register and so the site qualifies as a vacant site under the terms of the 2015 Act.

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

8.4.1. The appellant has not advanced a use for the site during 2020 and explains that permission had to be secured first before development could begin. The works began after May 2022, once a valid commencement notice had been received by the Council. Whilst on site, I observed that construction works were well underway and that a number of units were at roof level and that the foundations of others had been poured.

8.4.2. The planning authority have not responded in detail to the appellant's grounds of appeal and rely on the documentation on file, that I find sufficiently thorough. There are however, some fundamental issues that require further consideration and these are common to other Kildare County Council section 18 appeals currently with the Board. The planning authority issued a section 7(3) notice that advised the owner

that their site has been placed on the register, dated December 2020. Thus, for the duration of the 12 months concerned, December 2019 to December 2020, the site was a vacant site in accordance with the 2015 Act, but not yet entered on to the register, there is no dispute about this. The planning authority have issued a demand notice dated August 2022 for the year 2020, the cover letter seems to refer to the year 2021, however, I have based my assessment on the date of the actual section 15 Demand Notice. Section 15(1) of the 2015 Act states:

Subject to subsection (2), there shall be charged and levied for each year beginning with 2018 in respect of each vacant site in relation to which a market value has been determined in accordance with section 12 and that stands entered on the register a levy to be known as vacant site levy.

And, section 15(3) states:

Vacant site levy shall be payable in arrears each year beginning in 2019 by the owner of a vacant site that stands entered on the register on 1 January of that year to the planning authority in whose functional area the vacant site is located.

- 8.4.3. I take this to mean, firstly, that a charge shall be levied for each site that stands on the register and to which a market value has been assigned. The appeal site, stands on the register and a market value was notified in August 2021, despite engagement with the Valuation Tribunal the valuation was not appealed, section 15(1) is met. Secondly, that a charge should be levied after each year that a site stands on the register. In this instance, the site stood on the register from December 2020 (the date of the section 7(3) notice) to December 2021. In this instance, my reading of the 2015 Act is that as the site stood on the register for the year 2021, then a demand in arrears should issue in 2022 for the year 2021, and not 2020 as sought by the planning authority in this case. It would be unreasonable to charge a levy for the period (2020) during which the planning authority assessed the site under section 7(2) of the 2015 Act, that requires an opinion that the site was a vacant site for the duration of the 12 months concerned and continues to be a vacant site.
- 8.4.4. Accordingly, I consider that the levy demand should be sought for 2021 and not 2020 as advised by the planning authority. The Board may wish to consider that the demand notice issued by the planning authority is faulty in this single respect,

however, the status of the site at the time the appeal was made supersedes this issue.

- 8.4.5. A section 18 appeal to the Board sets down the parameters by which the Board can consider a demand for payment, section 18(3) states:

Where the Board determines that a site was no longer a vacant site on 1 January in the year concerned, or is no longer a vacant site on the date on which the appeal under this section is made, it shall give written notice to the planning authority who shall cancel the entry on the register in respect of that site and shall cancel the demand made in respect of that year.

- 8.4.6. There are two elements for the Board to determine, firstly if the site was no longer a vacant site on the 1 January. In this instance, the 1 January 2020, or more reasonably and correctly the 1 January 2021, I am satisfied that the site was still a vacant site, no permission had been granted and no works commenced. Or alternatively, what was the status of the site at the time the appeal was made, in this case the 8 September 2022. From the undated images supplied by the appellant, I can see that site works had commenced, foundations laid out and upstanding walls constructed. I also note that a commencement notice (lodged 27 May 2022) was entered onto the Council's Building Control Management System on the 7 June 2022. Lastly, I observed that a number of housing units were nearing completion on the date of my site visit.

- 8.4.7. I am satisfied that even though the site may have been a vacant site as of the 1 January 2020 it was no longer a vacant site on the date on which the appeal was made, 8 September 2022. This would accord with the spirit of the 2015 Act as articulated by circular letter that the levy is intended to act as a site activation and release mechanism, to incentivise the development of vacant or idle sites in urban areas identified by planning authorities as "regeneration land" or "residential land", with a view to bringing such sites into beneficial use. This is just such a case where a previously underutilised and vacant residentially zoned site is now on the verge of entering a beneficial use, in this case for housing. In my mind the 2015 Act has served its purpose and brought into use a tract of land suitable for housing and it would be reasonable for the Board to conclude that the site should be removed from the register and the charge cancelled. In this instance the planning authority have

achieved a Local Area Plan objective for the development and renewal of areas in need of regeneration through the effective use of the Vacant site Register.

8.5. Levy Calculation

- 8.5.1. A Notice of Determination of Market Value was issued to Maridan Property Limited on the 20 August 2021 stating that the valuation placed on the site is €3,700,000. 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 Maridan Property Limited on the 16 August 2022 for the value of €259,000.00.
- 8.5.3. The applicable rate is 7% and it is evident, therefore, that the levy calculation based on the determined valuation has been correctly calculated. The Demand Notice issued under section 15 of the 2015 Act correctly states the levy due on the valuation determined by the planning authority. However, as I have outlined in section 8.4 above, I am not satisfied that the site stood on the register as of the 1 January 2020, at a time when no valuation on the lands had been sought or determined. The section 12(4) notice issued in August 2021. For the year that the levy has been demanded (2020), the site did not stand on the register and so no levy shall be payable as required by section 15(3) of the 2015 Act. For all of these reasons I consider that the levy calculation for 2020 should therefore be nought and that the site should remain on the register.

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 8 September 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 should correct the amount of levy demand to nought, as the site had not yet been placed on the Vacant

Site Register on the 1 January of the year concerned (2020) and so the amount of levy cannot be 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 extent of site construction works on the 8 September 2022, the date on which the appeal was made,
- (e) The site had not yet stood on the register as of the 1 January 2020, the payment of the Vacant Site levy in arrears cannot be correctly calculated in accordance with section 15(3) of the Urban Regeneration and Housing Act 2015 (as amended),

the Board is not satisfied that the site was a vacant site on the 8 September 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.

Stephen Rhys Thomas
Senior Planning Inspector

19 January 2023