



An
Bord
Pleanála

Inspector's Report ABP-314586-22

Type of Appeal

Appeal against a Section 18 Demand for Payment.

Location

Dublin Road, Kildare Town, Co. Kildare.

Planning Authority

Kildare County Council

Planning Authority VSL Reg. Ref.

VS KILD-10

Site Owner

Darflan 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 €45,500 for vacant site lands at Dublin Road, Kildare Town, Co. Kildare, and identified as VS KILD-10. The notice was issued to Darflan Limited and dated 16 August 2022. The owner Darflan 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 21 June 2021. The value of the subject site is stated to be €650,000.
- 1.3. A Notice of Proposed Entry on the Vacant Sites Register was issued Darflan Limited on the 4 September 2020. On the 18 December 2020, the Notice of Entry on the Vacant Sites Register was issued to Darflan 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 Kildare Town and a short distance from the Market Square to the west. The lands have a partial boundary to the Dublin Road (Hospital Street), interrupted by a dwelling that falls outside the site. The western and northern boundaries are fenced to grassed areas associated with Magee Terrace. A house, commercial buildings and yard space are located to the east of the site. The overall site is level and currently in grass, buildings occupy the eastern portion of the site. This building has a number of windows boarded up, however the front elevation windows are not boarded up.

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. Kildare Local Area Plan 2012-2018 (extended)

- 4.2.1. 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.

4.3. Kildare Local Area Plan 2019-2025

- 4.4. The Kildare Town Local Area Plan 2019 -2025 has been paused due to the Variation of the County Development Plan 2017 -2023. It is envisaged that the new Draft Kildare Town LAP will go on public display in 2022. Until a new plan has been adopted to replace the 2012 - 2018 LAP, any planning decisions will be based on the 2012 -2018 plan.

- 4.5. **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. None recent.

6.0 Planning Authority Decision

6.1. Register of Vacant Sites Report:

- 6.1.1. Report Date 27 October 2020 (countersigned 4 March 2021). Site is zoned residential. Site visits 3 June 2020 and 23 October 2018. No planning history to the site and no submission received.
- 6.1.2. Second Report 4 March 2021. Information similar to previous report.

6.2. Planning Authority Notice

- 6.2.1. Kildare County Council advised the site owner that the subject site (Planning Authority site ref. VS KILD-10) is now liable for a payment of the levy for 2020 of €45,500, dated 16 August 2022. Payment terms and methods are outlined.
- 6.2.2. A Notice of Determination of Market Value was issued on the 21 June 2021 stating that the valuation placed on the site is €650,000 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 4 September 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:

- Work has begun (Q4 2019) to renovate the existing farmhouse on site.
- There is a masterplan for the site, the second phase is to incorporate Loretto Cottage into the whole of the site, together with new extensions and a larger garden. Both properties will then be rented.
- As the lands have been in family ownership for a lengthy time, it is desirable that a long-term custodial view of the site is taken.

The appeal is accompanied by the demand letter, a sketched masterplan and an email (dated 22 August 2022) to Kildare County Council with regard to the future of the site.

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 plans are afoot to renovate and make ready for rental properties on and off the site.

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 refers to works carried out to the property on site in 2019 and the hope of amalgamating the cottage to the front of the site within the overall landholding. Once this is achieved further works are envisaged before both properties will be let. The appellant requests that the site be removed from the register, no other reasons are given other than those above.
- 8.3.2. The grounds of appeal do not directly address whether the site was vacant or idle, the need for housing or the suitability of the site for housing. However, the appellant has stated that it is their intention to improve their properties at this location and make them available to rent. This, in my mind confirms the suitability of considering the site as residential lands for the purposes of the 2015 Act.
- 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. 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 residential land. The owner at the time, did not 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 idle 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, the start of maintenance works during 2019 are noted as well a pause during Covid restrictions. Whilst on site, I observed that the main structure on site was partially boarded up,

but in relatively good condition. The lands, however, were overgrown and unkempt, showing signs of very little activity. The appellant points to a masterplan for the site and the hope of future works to be carried out in order to make their property portfolio at this location available for rent. As far as I can tell none of these things have happened to any great extent and the lands remain idle and consequently conform to the criteria for a vacant site as set out in section 5(1)(a) of the 2015 Act.

- 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, there is no substantial 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, the valuation was not appealed to the Valuation Tribunal, 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 as of December 2020 (the date of the section 7(3) notice) to December 2021. 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. In summary, the site did not stand on the Vacant Site Register during 2020, it was only placed on the register on the 18 December 2020, therefore a charge for 2020 cannot be demanded in accordance with section 15(3) of the 2015 Act.

8.4.4. In addition, I note that the section 12(4) notice of determination of market value was issued in on the 21 June 2021, and refers to the placement of the site onto the register on the 18 December 2021. However, the covering letter refers to the placement of the site on the correct date 18 December 2020. I am satisfied that these are typographical errors, but worth noting, nonetheless.

8.4.5. In summary, 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, as there are no other issues advanced by the appellant that would lift the site from the register.

8.5. Levy Calculation

8.5.1. A Notice of Determination of Market Value was issued to Darflan Limited on the 21 June 2021 stating that the valuation placed on the site is €650,000. 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 Darflan Limited on the 16 August 2022 for the value of €45,500.00.

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 June 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 but that the site should remain on the register.

9.0 Recommendation

- 9.1. I recommend that 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. The site should remain on the Vacant Site Register.

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,
- (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 considered that, in accordance with Section 18(4) of the Urban Regeneration and Housing Act 2015 (as amended), the Board has determined that the amount of the levy has been incorrectly calculated in respect of the vacant site and the amount charged by the planning authority was not in accordance with Section 15(3) of the Urban Regeneration and Housing Act 2015 (as amended), the amount of vacant site levy to be charged in respect of the site for the year 2020, shall be zero. The Board considered that it is appropriate that a notice be issued to the planning authority who shall amend the demand made in respect of the year 2020 in accordance with the revised amount (zero) but shall retain the entry on the Vacant Sites Register.

Stephen Rhys Thomas
Senior Planning Inspector

19 January 2023