



An
Bord
Pleanála

Inspector's Report ABP-314596-22

Type of Appeal	Appeal against a Section 18 Demand for Payment.
Location	Lands located at Ferns Bridge, Canal Harbour, Monasterevin, Co. Kildare.
Planning Authority	Kildare County Council.
Planning Authority VSL Reg. Ref.	VS/MON-02.
Site Owner	Masonbrook Holdings.
Planning Authority Decision	Vacant site levy - Demand Payment.
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 €59,500 for vacant site lands located at Ferns Bridge, Canal Harbour, Monasterevin, Co. Kildare, and identified as VS MON-02. The notice was issued to Masonbrook Holdings and dated 16 August 2022. The owner, Masonbrook Holdings 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 €850,000.
- 1.3. A Notice of Proposed Entry on the Vacant Sites Register was issued Masonbrook Holdings on the 4 November 2020. On the 21 December 2020, the Notice of Entry on the Vacant Sites Register was issued to Masonbrook Holdings. This section 7(3) notice was not appealed to the Board.

2.0 Site Location and Description

- 2.1. The site is located within Monasterevin Town, adjacent to the train station. Canal Harbour Road runs along the western boundary of the site, the railway along the south and the remainder of the boundaries back on to existing housing estates at Ferns Avenue. The site is level and overgrown with grassland vegetation, an access laneway bisects the site and provides a more direct pedestrian and cyclist access from Ferns Avenue to town to the south.

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 21 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. Monasterevin Local Area Plan 2016-2022

4.2.1. The site is located on lands subject to zoning objective C: New Residential - To provide for new residential development.

4.3. **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: 21/1729 – permission for 77 dwellings.

5.1.2. PA ref: 15/1104 – permission for 2 houses.

5.1.3. PA ref: 15/1041 – permission for 6 houses.

- 5.1.4. PA ref: 14/45 – revisions to house types.
- 5.1.5. PA ref: 10/550 - permission granted to extend 04/2851.
- 5.1.6. PA ref: 07/715 – revisions to layout.
- 5.1.7. PA ref: 07/407 – permission for change of house types.
- 5.1.8. PA ref: 04/2851 – permission for 466 houses

6.0 Planning Authority Decision

6.1. Register of Vacant Sites Report:

- 6.1.1. Report – site inspection date 26 March 2020. Site under grass, a pedestrian path crosses the site, overall site not in use. Site is zoned residential. Site visits 26 March 2020 and 24 October 2018.
- 6.1.2. Second Report 17 December 2020. Submission received, in order to develop the site more sustainably a greater number of dwellings than that allowed for in the development plan is required and could be refused permission. The PA note the submission, but the site fulfils the criteria for a vacant site and should be placed on the register.

6.2. Planning Authority Notice

- 6.2.1. Kildare County Council advised the site owner that the subject site (Planning Authority site ref. VS MON-02) is now liable for a payment of the levy for 2020 of €59,500, dated 16 August 2022. Payment terms and methods are outlined.
- 6.2.2. A Notice of Determination of Market Value was issued on the 20 August 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 21 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 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 subject site forms part of a wider landholding in the area, that has already been developed for housing. Numerous permissions have adjusted the number of permitted dwellings and construction is underway across the overall landholding, PA ref: 19/997 refers. The landholding is being developed in a phased manner and part of which is the provision of pedestrian/cycle way along Canal Harbour Road, in addition to the linkage across the subject site, provided as part of previous permissions. The subject lands have been partially developed, PA ref: 19/997 refers, hence the subject lands are not vacant.
- The lands have been developed for housing and the subject site includes access roads that formed part of permitted development. In order to complete a footpath and cycleway along the Canal Harbour Road works were carried out on the subject site in the last 18 months, the site is not vacant.
- A new planning application that includes part of the subject site has been lodged for 77 dwellings, PA ref: 211729 refers. This shows an intention on the part of the owner to develop the lands for residential uses.
- The remainder of the lands cannot be developed because the core strategy of the Development Plan does not permit it. Variation 1 of the Kildare CDP 2017 allows for 90 dwellings to be delivered in Monasterevin up until 2023. If the entire lands were developed at a sustainable level the core strategy would be breached and permission refused. There is no housing need in Monasterevin. Sections 6(4) and 6(5) of the 2015 Act all reference the core strategy of the relevant plan and that this must be regarded if a site is to be considered a vacant 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 indicated that the site is used as a pedestrian linkage between the Ferns Estate and Canal Harbour Road and that some development has taken place along the site frontage to the Canal Harbour Road for footpath and cycleway use. In addition, the appellant points out that numerous planning applications permitted on the site indicate a willingness to provide housing but that the core strategy for Monasterevin restricts more sustainable development at present.

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 21 December 2020. No Section 9 appeal was made to the Board. The appellant has referenced numerous permissions for the site and these are noted. The owner made a submission to the planning authority on foot of the section 7(1) notice and these comments were considered by the planning authority but the site was nonetheless placed on the register. The appellant now states that the site cannot be considered as a vacant site because there is no need for housing in Monasterevin according to the core strategy of the Development Plan.

- 8.3.2. Firstly, the appellant maintains that the site should not now be considered as a vacant site because the current development plan core strategy limits housing in Monasterevin and so any attempt to develop the site in line with new government guidance would be met with a refusal of permission. This case was also made as part of the owner's section 7(1) submission but was discounted by the planning authority. The owner elected not to appeal the decision of the planning authority to place the site on the register. Based upon table 3.3 of Variation 1 of the Kildare Development Plan (population and housing unit allocation 2020-2023), I can see that the dwelling target up to 2023 for Monasterevin is 157 units. I cannot tell what the core strategy has in store for the county into the future, as the 2023-2029 Development Plan is not available to view. However, I can see that permission has been granted on the majority of the subject site for 77 additional housing units under Variation 1 of the 2017 County Plan, 21/1729 refers. I am satisfied that there was and is a housing need for Monasterevin, section 5(1)(a)(i) of the 2015 Act is met. In addition, given that the lands are zoned residential and permission has been granted for residential development, the lands are eminently suited for the provision of housing.
- 8.3.3. The appellant refers to an access footpath that bisects the subject site and has done for some time. According to the appellant this pedestrian route formed part of previous permissions and that a new pedestrian/cycleway has been constructed across the front of the site along Canal Harbour Road. Whilst these statements are factually correct and I observed the use of same during my site visit, these features only account for a very small proportion of the site and cannot be considered to oppose section 5(1)(a)(iii) that refers to the majority of the site being vacant or idle, which in this case it was and is. I am satisfied that the site met all the criteria with reference to residential lands under section 5(1)(a) of the 2015 Act.
- 8.3.4. 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 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 advanced a use for the site during 2020, that pedestrian footpaths and a cycleway through and along the edge of the site are availed of by local residents. This is correct and it is clear that such facilities are made use of by residents in the area. However, the footpath/cycleway infrastructure that bisects and runs along the edge of the subject site only amounts to a very small proportion of the entire lands bounded by the vacant site outlined by the planning authority. The majority of the site remains unused and overgrown. Section 18(3) of the 2015 Act asks the Board to determine if the site was still a vacant site as defined by the Act, I find that in this case, because the majority of the site remains idle or without a use and vacant, that is to say empty of any development, the site was and remains a vacant site in accordance with 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, but not yet entered on to the register, there is no consequential 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 that year cannot be demanded in accordance with section 15(3) of the 2015 Act.

8.4.4. 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 Masonbrook Holdings on the 20 August 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 Masonbrook Holdings on the 16 August 2022 for the value of €59,500.00.
- 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 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. 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