



An
Bord
Pleanála

Inspector's Report ABP-315198-22

Type of Appeal	Appeal against a Section 18 Demand for Payment for 2021
Location	Cranmore Road, Abbeyquarter South, Sligo.
Planning Authority	Sligo County Council.
Planning Authority VSL Reg. Ref.	SL-VS-33
Site Owner	Lidl Ireland GmbH
Date of Site Visit	29 th November 2023
Inspector	Paul O'Brien

1.0 Introduction

This appeal refers to a Section 15 Notice of Demand for Payment of Vacant Site Levy issued by Sligo County Council, stating their demand for a vacant site levy for the year 2021 amounting to €28,000 for a vacant site at Cranmore Road, Abbeyquarter South, Sligo and which is identified as SL-VS-33. The registered owner of the appeal site is Lidl Ireland GmbH Headquarters, Main Road, Tallaght, Dublin 24.

Notice of Proposed Entry on the Vacant Sites Register was issued to Lidl Ireland GmbH on the 9th of November 2018 and notification of Entry on the Vacant Sites Register was issued on the 12th of December 2018.

A valuation pertaining to the site was issued by Sligo County Council on the 4th of September 2019 to Lidl Ireland GmbH. The value of the subject site is stated to be €400,000. The Determination of Market Value was not appealed to the Valuation Tribunal.

A Notice of Demand for Payment of Vacant Site Levy for the year 2021 under Section 15 of the Urban Regeneration and Housing Act was issued to Lidl Ireland GmbH on the 26th of October 2022 for the value of €28,000. Lidl Ireland GmbH have appealed the Demand for Payment Notice issued pursuant to Section 15 of the Urban Regeneration and Housing Act and this forms the current appeal before the Board.

2.0 Site Location and Description

The site, with a stated area of 0.89 hectares is located to the south of a Lidl supermarket which is located to the southern side of the Cranmore Road to the eastern side of Sligo town. The supermarket building is located to the south of the site and to the front/ north is a large surface car park.

The subject lands are located to the south/ rear of the supermarket building and consists of undeveloped ground that is under grass. The subject lands are almost triangular in shape. To their west is residential development associated with Cranmore Drive/ Cranmore Place. Lands to the south are also in residential use and those to the east are undeveloped. Boundary treatments consist of a mix of fencing/ walls and hedgerows.

3.0 Statutory Context

3.1 Urban Regeneration and Housing Act 2015 (as amended).

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 Section 5(1)(a) and 5(2) of the Act. Section 7(3) Notices were issued on the 9th of November 2018 entering the site onto the register on that date, and following an appeal to the Board, an Order dated 12th December 2018 was issued confirming the entry of these lands on to the Vacant Sites Register.

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

4.1 **Sligo County Development Plan 2017 – 2023:** was adopted on the 31st of July 2017 and came into effect on the 28th of August 2017. By resolution of Sligo County Council, dated the 3rd of April 2023, the development plan was extended by one year to July 2024.

4.2 Section 3.7.4 - Vacant site levy:

'The Urban Regeneration and Housing Act 2015 introduced the vacant site levy as a site activation measure, to ensure that vacant or underutilised land in urban areas is brought into beneficial use, while also ensuring a more efficient return on State investment in enabling infrastructure and helping to counter unsustainable urban sprawl.

The vacant site levy can be imposed by planning authorities under certain conditions in designated areas, i.e. where sites remain vacant and site owners/ developers fail to bring forward reasonable proposals, without good reason, for the development/ reuse of such property in line with the provisions of the relevant local area or development plan.

For the purpose of the application of the vacant site levy, a site means "any area of land exceeding 0.05 hectares identified by a planning authority in its functional area but does not include any structure that is a person's home."

The levy shall be applied annually by a local authority at a rate of 3% of the market valuation of the vacant sites, exceeding 0.05 hectares in area, with reduced and zero rates applying in certain circumstances (0.05 hectares roughly equates to one-eighth of an acre or 500m²). The market valuation shall be determined by the local authority by authorising a suitably qualified person to estimate the price which the unencumbered fee simple of the site would fetch if sold on the open market. The levy shall be payable by the registered owner(s) of the site.

Sligo County Council will implement the vacant site levy as provided for in the Urban Regeneration and Housing Act 2015 and in accordance with the requirements set out in the Department's Circular Letter PL 7/2016.'

4.3 It is an objective of Sligo County Council to: Objective O-REG-1 Identify areas in need of regeneration in Sligo City and, if appropriate, in the Key Support Towns of Ballymote, Enniscrone and Tobercurry, as part of the process of review or preparation of the respective local area plans.

4.4 **Sligo and Environs Development Plan 2010-2016 (SEDP):**

The Sligo and Environs Development Plan 2010-2016 (SEDP) was adopted in November 2009 and was due to expire in 2015. Sligo Borough Council was abolished in 2014, and the lifetime of the SEDP was automatically extended in accordance with the provisions of section 11A of the Planning and Development Act 2000 (as amended). In August 2017, the provisions of the SEDP were further extended through incorporation into the Sligo County Development Plan 2017 - 2023 (CDP). The CDP states that the policies and objectives of the SEDP will continue to apply until the adoption of a Local Area Plan for Sligo and Environs.

The site is zoned MIX-1 – mixed uses (non retail), in which residential development is permitted in principle. Objective: Promote the development of a dynamic mix of uses able to create and sustain vibrant residential and employment areas. Commercial (non-retail), residential, leisure, employment/enterprise uses are encouraged by this zoning.

5.0 Planning History

Subject site:

PA Ref. 0970029 refers to a March 2010 decision to refuse permission for a mixed-use commercial development of shops, creche, entertainment uses, restaurants/ café and offices.

Adjoining lands to the north:

PA Ref. 21338 refers to a February 2022 decision to grant permission for amendments to planning application Reference 18/198: The gross floor area increases from 2416 sq ms to 2537 sq ms and there are revisions to the layout and services available on site.

PA Ref.18198 refers to an August 2018 decision to grant permission for a development consisting of permission for the demolition of an existing permitted licensed discount foodstore and the construction of a new, licensed, discount foodstore, including ancillary off-licence use; relocation of vehicular entrance, removal of all existing signs and replacement with free standing building mounted signage, hard and soft landscaping, and all other ancillary and associated site development works above and below ground level to complete the development.

6.0 Planning Authority Decision

6.1 Register of Vacant Sites Report:

Copies of the Planning Authority Vacant Sites Reports have been provided, and these include photographs of the site over a period of time. The following are provided and are included on file:

- Report and photograph dated 13th October 2016 in accordance with the Urban Regeneration and Housing Act 2015.
- Report and photograph dated 25th October 2017 in accordance with the Urban Regeneration and Housing Act 2015.
- Report dated 8th November 2018 in accordance with the Urban Regeneration and Housing Act 2015 as amended.
- Report dated 20th September 2019 – update report includes photograph.
- Report dated 28th February 2020 – update report includes photograph.

6.2 Planning Authority Notices:

A Notice of Determination of Market Value was issued to Lidl Ireland GmbH on the 4th of September 2019 that the valuation placed on the site is €400,000, as of the 28th of August 2019, and instructions as to make an appeal to the Valuations Tribunal, accompanied by a map with the site outlined.

Three separate Section 15 Demand for Payment Notice of Vacant Site Levy have been issued to Lidl Ireland GmbH. These are:

Section 15 Demand for Payment Notice 2021 Vacant Site Levy – Issued on the 26th of October 2022

Section 15 Demand for Payment Notice 2020 Vacant Site Levy - Issued on the 15th of December 2021

Section 15 Demand for Payment Notice 2019 Vacant Site Levy – Issued on the 16th of December 2021.

The site was therefore included on the Vacant Site Register for the years 2020, 2021 and 2022 and these inclusions are the subject of the current appeal before the Board.

7.0 The Appeal

7.1 Grounds of Appeal

The landowner has submitted an appeal to the Board, against the Demand for Payment for the years 2019, 2020 and 2021 – Inclusion on the register for 2020, 2021 and 2022. The grounds of the appeal can be summarised as follows:

- The planning history of the site is provided.
- The history of inclusion on the Vacant Site Register is provided.
- The site was in use as part of the development of the adjoining Lidl supermarket. It was utilised for the storage of equipment and materials.
- Permission for the development of the supermarket was granted in 2018 and due to the Covid Pandemic, no work could commence on site until 2021.
- The site is not in a neglected condition and the provision of paladin fencing ensures it is secure from access.
- CSO statistics indicate that there is no excessive need for housing in the Sligo area.
- Entry onto the Vacant Site Register is an unjust attack on the right to private ownership of property under the constitution.
- Lidl request that the site be removed from the register in accordance with Section 18(3) of the Urban Regeneration and Housing Act 2015 as amended, as the site was not vacant for the period from the 1st of January 2020 to the present.

7.2 Planning Authority Response

The Planning Authority made the following comments:

- The applicant did not demonstrate that works had commenced during the years 2019, 2020 and 2021.
- The Emergency Measures in the Public Interest (Covid-19) Act, 2020 did not stop the levy accruing but only impacted on timelines/ timeframes.
- Refers to the 'Sligo & Environs Area Vacant Sites Register Appendix 1 – Assessment of Housing Needs for the purposes of Section 5(1)(a)(i) of the Urban Regeneration & Housing Act 2015.

The Planning Authority consider that the demand still stands.

8.0 Assessment

8.1 Introduction

The appeal on hand 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

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) or 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 2019, 2020 and 2021.

8.3 Is it a Vacant Site?

A Section 7(3) Notice of Entry on the Vacant Sites Register was issued on the 21st of December 2020. This notice was appealed to the Bord who upheld the decision of the Planning Authority to include the site on the register. An assessment was carried out by the planning authority as to whether the site constituted a vacant site under section 5(1)(a). Following an assessment, the site was placed on the register, these matters have not changed.

The appellants dispute that the site continues to be vacant at the time of appeal as it was in use related to the development of the adjoining Lidl Supermarket. The site is not in a neglected condition and is secured from unauthorised access by the provision of paladin fencing.

I note the submitted details, however as reported by the Planning Authority, there is no evidence provided that the site was in use associated with the development of the supermarket. The appellant has not provided any photographs or other suitable evidence that would demonstrate what these lands were in use for, for the years 2019 to 2021.

Based on the information submitted and the evidence presented by the Planning Authority, I am satisfied that for the period/ years concerned, 2019, 2020 and 2021, the subject lands remained a vacant site.

8.4 Levy Calculation

A Notice of Determination of Market Value was issued to Lidl Ireland GmbH on the 4th of September 2019 with a value of €400,000. This was not queried in the appeal and a levy of €28,000 was served on the landowner.

9.0 Recommendation

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 for the years 2019, 2020 and 2021. 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 need for housing in the area, the site is suitable for the provision of housing as demonstrated by the residential land use zoning for the area, and that insufficient reason is put forward to cancel entry on the Vacant Sites Register,

(e) That the majority of the site is and was vacant/idle for the period concerned,

(f) The amount of the levy has been correctly calculated at 7% of the site value in 2021,

(g) There has been no change in the ownership of the site during the period concerned, 2019 - 2021, the Board is satisfied that the site was a vacant site for the years 2019, 2020 and 2021 and the amount of the levy has been correctly calculated. The demand for payment of the vacant site levy under Section 15 of the Urban Regeneration and Housing Act 2015 is, therefore, confirmed.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Paul O'Brien

Inspectorate

6th December 2023