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Bord  
Pleanála

## Inspector's Report ABP-315236-23

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<b>Type of Appeal</b>	Appeal against a Section 18 Demand for Payment.
<b>Location</b>	Site at Hodson Bay, Barrymore, Athlone, Co. Roscommon.
<b>Planning Authority</b>	Roscommon County Council.
<b>Planning Authority VSL Reg. Ref.</b>	VS/HB/18/1.
<b>Site Owner</b>	Sonja and Thomas Connolly.
<b>Date of Site Visit</b>	16 <sup>th</sup> October 2023.
<b>Inspector</b>	Daire McDevitt.

## **1.0 Introduction**

This appeal refers to a Section 15 Notice of Demand for Payment of Vacant Site Levy issued by Roscommon County Council, stating their demand for a vacant site levy for the year 2022 amounting to €14,000 for vacant site at Hodson Bay, Barrymore, Athlone, Co. Roscommon and identified as VS/HB/18/1. The appeal site has stated registered owners as Sonja and Thomas Connolly.

A Notice of Proposed Entry on the Vacant Sites Register was issued on 27<sup>th</sup> March 2018. On the 20<sup>th</sup> June 2018, the Notice of Entry on the Vacant Sites Register was issued. This section 7(3) notice was not appealed to the Board.

A valuation pertaining to the site was issued by Roscommon County Council on 4<sup>th</sup> September 2018. The value of the subject site is stated to be €150,000.

A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued on the 25<sup>th</sup> November 2019 for the value of €10,500.

A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued on the 30<sup>th</sup> November 2020 for the value of €10,500 for 2019 and €10,500 for 2020.

A revaluation pertaining to the site was issued by Roscommon County Council on 15<sup>th</sup> November 2021. The value of the subject site is stated to be €200,000.

An appeal was lodged under ABP 312192-21. ABP notified the appellants that as a Section 15 Notice was not issued to the landowners following the revaluation of the site there was not provision to appeal.

A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued on the 15<sup>th</sup> November 2022 for the value of €14,000.

The appellants (Sonja and Thomas Connolly) appealed the Demand for Payment Notice issued pursuant to Section 15 of the Urban Regeneration and Housing Act under which forms the current appeal before the Board.

## **2.0 Site Location and Description**

The site with a stated area of c.1.3ha is located on the northern side of a local road access off the N61 at Barrymore which also serves as an access to the Hodson Bay Hotel and Athlone Golf Club. The site is located c.4.6km from Athlone town in county Roscommon.

### **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 planning authority 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. A section 7(3) Notice was issued 20<sup>th</sup> June 2018 and the site was subsequently entered onto the register on that date.

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**

The relevant plan is the Roscommon County Development Plan 2022-2028 which came into effect on the 19<sup>th</sup> April 2022.

The Planning Assessment refers to the expired Hodson Bay Area Plan contained in the Roscommon County Development Plan 2014-2020 and the lands identified as 'Existing Residential'.

The site is located within the identified settlement boundary of the Hodson Bay/Barrymore Area Plan contained in Volume II Section 4.1 of the Roscommon County Development Plan 2022-2028. Map HB1 Hodson Bay includes land zoned 'leisure Tourism/Amenity' and 'Green Belt'. No other land uses are identified.

Section 4.1 states 'The Hodson Bay/Barrymore area, whilst not specifically a town or village, warrants the preparation of an Area Plan, owing to the nature of development that has occurred in this area over recent years'

Section 4.7 refers to Urban Regeneration and the Vacant Site Levy which states 'The vacant site levy may be applied to lands within the urban settlement which are identified as being in need of renewal and/or regeneration or are residentially zoned.

NOTE to Board: I have reviewed the interactive land use zoning maps available on the Roscommon County Council website (accessed 17<sup>th</sup> October 2022) and the lands are identified as 'Existing Residential' by reference to the Roscommon County Development Plan 2014-2020. This Plan has been superseded by the current 2022-2028 Plan and the lands are not zoned in the current County Development Plan.

## 5.0 Planning History

**PA Ref. 23/298** refers to a current application for permission to construct a detached dwelling house and garage on site no. 5 (Phase 2). (Note: development access entrance/exit onto the public road, ancillary landscaping and footpaths along with connection to public services and sewers including all associated site development works previously granted under PD/21/233). Current Status: Further Information.

**PA Ref. 21/233** refers to a 2021 grant of permission to: (a) construct a development access road incorporating entrance / exit onto the public road, ancillary landscaping, and footpaths along with connection to public services and sewers including associated site development works and (b) construct 4 No. detached dwelling houses and garage. Was the subject of a leave to appeal request under ABP 310951-21 which was refused in August 2021.

**PA Ref. 21/176** refers to an incomplete application for permission to a) construct development access road incorporating an entrance/exit onto the public road, ancillary landscaping and footpaths along with connection to public services and sewers including all associated site development works and b) construct 4 no. detached dwelling houses and garages.

**PA Re. 19/141** refers to an incomplete application for permission to a) construct development access entrance/exit onto the public road, ancillary landscaping and footpaths along with connection to public services and sewers including all associated site development works and b) construct 4 no. detached dwelling houses and garages.

**PA Ref. 19/187** refers to an application that was withdrawn for permission to a) Construct development access entrance /exit onto the public road, ancillary landscaping and footpaths along with connection to public services and sewers including all associated site development works and b) construct 4 no. detached dwelling houses and garages .

**PA Ref. 19/186** refers to an application that was withdrawn for permission to construct a dwelling house and garage together with ancillary site work.

**PA Ref. 19/654** refers to a 2020 decision to refuse permission to a) construct a development access road incorporating entrance/exit onto the public road, ancillary landscaping and footpaths along with connection to public services and sewers including all associated site development works and b) Construct 5 no. detached dwelling houses and garages and ancillary works, external stores and services together with associated site works. Not appealed.

## **6.0 Planning Authority Decision**

### **6.1 Register of Vacant Sites Report:**

A Vacant Site Assessment Report (11/05/2018) was prepared for the site. The following key points are noted:

Site visits were undertaken in September 2016 and September 2017.

The planning authority stated that the site was vacant for in excess of 12 months.

The report refers to an attached w.r.t Housing Need (no copy on file).

The report recommendation refers to “should be included for assessment on the Vacant Site Register”. There is no reference in the report to either section 5(1)(a) or 5(1)(b) of the 2015 Act and what criteria was used to assess the site. The assessment refers to ‘Existing residential’ zoning.

## **6.2 Planning Authority Notices:**

A Notice of Proposed Entry on the Vacant Sites Register was issued on 27<sup>th</sup> March 2018. On the 20<sup>th</sup> June 2018, the Notice of Entry on the Vacant Sites Register was issued. This section 7(3) notice was not appealed to the Board.

A valuation pertaining to the site was issued by Roscommon County Council on 4<sup>th</sup> September 2018. The value of the subject site is stated to be €150,000.

A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued on the 25<sup>th</sup> November 2019 for the value of €10,500.

A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued on the 30<sup>th</sup> November 2020 for the value of €10,500 for 2019 and €10,500 for 2020.

A revaluation pertaining to the site was issued by Roscommon County Council on 15<sup>th</sup> November 2021. The value of the subject site is stated to be €200,000.

An appeal was lodged under ABP 312192-21. ABP notified the appellants that as a Section 15 Notice was not issued to the landowners following the revaluation of the site there was not provision to appeal.

A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued on the 15<sup>th</sup> November 2022 for the value of €14,000.

## **7.0 The Appeal**

### **7.1 Grounds of Appeal**

The landowners have submitted an appeal to the Board, against the decision of Roscommon County Council to retain the subject site on the Vacant Sites Register

and against the Demand for Payment. The grounds of the appeal can be summarised as follows:

- The site is not vacant, the appellants have been actively trying to develop the site since 2018 through the planning process. Planning history of withdrawn and refused applications. Extant permission for 4 houses on the lands. Land identified as 'site no. 5 excluded due to the presence of Japanese knotweed.
- Query the valuation process which is considered flawed as has no regard to the issues by RCC associated with developing the site for residential purposes.
- Attempted to make an appeal but were informed that as no section 15 notices was issued there was no recourse to appeal.
- Delays developing the site due to Covid-19 and third party applications for leave to appeal created delays beyond the appellants' control.
- The site is not situated in an area where there is a need for housing, the site is in a rural setting not suitable for large residential development.
- Presence of Japanese knotweed on site.
- Attempted to lodge appeal before but no section 15 notice in place at the time.

## **7.2 Planning Authority Response**

Correspondence dated 22 December 2022 includes copies of planning history and VS history.

Correspondence dated 13 January 2021 (reference to 2021 is considered a clerical error) as the correspondence was received 30 January 2023 in response to ABP correspondence dated 12 January 2023) is summarised as follows:

- Refer to Vacant site history submitted 22 December 2022.
- Site inspected on 4<sup>th</sup> November 2022 and found to remain vacant. Therefore liable to VSL for 2022.

## **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 2022.

## **8.3 Is it a Vacant Site?**

A Section 7(3) Notice of Entry on the Vacant Sites Register was issued on the 20<sup>th</sup> June 2018. No Section 9 appeal was made to the Board. A assessment was carried out by the Planning Authority as to whether the site constituted a vacant site. Following an assessment the site was placed on the register.

The appellants dispute that the site is vacant or continues to be vacant at the time of appeal as they are actively engaged in trying to develop the site since 2018 with an extant permission on the site (2021 grant). Furthermore it is submitted that the presence of Japanese knotweed impedes the development of a portion of the lands. I note there is a current application lodged with Roscommon County Council for a house on said portion of the lands.

A Section 7(3) Notice of Entry on the Vacant Sites Register was issued on the 20<sup>th</sup> June 2018. No reference in the Notice to the legislation (ie whether section 5(1)(a) or 5(1)(b) of the 2015 Act). At that time the site was zoned 'Existing Residential' and it appears that the criteria for residential lands may have been applied and the site placed on the register. No Section 9 appeal was made to the Board. Subsequently, the Roscommon County Development Plan 2022-2028 came into effect and



contained there is the Hodson Bay/Barrymore Action Plan which has no zoning attached to the appeal site.

The zoning status of the lands did not change until 19<sup>th</sup> April 2022. I am satisfied that the test for residential lands should apply for the years preceding the 19<sup>th</sup> April 2022, ie the date the Roscommon County Development plan 2022-2028 came into effect. The 2015 Act states with reference to section 18(3) as follows: 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.

The key point in this section of the Act, is the year concerned and the date upon which the appeal is made. The rationale follows that if the planning authority had demanded the levy each consecutive year, as I believe the 2015 Act intended, the site would have been rightly classified as residential lands right up until 2022, section 15(1) refers: 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 .

However, matters have changed in between times, the zoning status of the lands changed on the 19<sup>th</sup> April 2022. In my view a cautionary approach by the Board serves to ensure that any property owner is not disadvantaged in their right to challenge decisions made by a planning authority, in this case the consequences of a zoning change from one Plan to another. The 2015 Act is not so clear about what happens when zoning changes to such an extent that a site would fall to be assessed differently (ie whether residential or regeneration), but the Act does talk about whether a site is no longer a vacant site, and the definition of a vacant site are clearly defined as either residential or regeneration, section 5 of the Act refers as follows:

(1) In this Part, a site is a vacant site if—

(a) in the case of a site consisting of residential land—

(i) the site is situated in an area in which there is a need for housing,

- (ii) the site is suitable for the provision of housing, and
- (iii) the site, or the majority of the site is
  - (I) vacant or idle, or
  - (II) (II) being used for a purpose that does not consist solely or primarily of the provision of housing or the development of the site for the purpose of such provision, provided that the most recent purchase of the site occurred—
    - (A) after it became residential land, and
    - (B) before, on or after the commencement of section 63 of the Planning and Development (Amendment) Act 2018. and
- (b) in the case of a site consisting of regeneration land— (
  - i) the site, or the majority of the site, is vacant or idle, and
  - (ii) the site being vacant or idle has adverse effects on existing amenities or reduces the amenity provided by existing public infrastructure and facilities (within the meaning of section 48 of the Act of 2000) in the area in which the site is situated or has adverse effects on the character of the area.

The crux of the matter is the change in circumstance of the land use zoning and how the lands should now be considered. The current appeal before the Board was lodged in December 2022 after the 2022 Plan came into effect in April of that year, as such relatively recent matters that concern the lands should be taken into consideration.

The site has no clearly identifiable zoning as per Map HB1 contained in the Roscommon County Development Plan 2022-2028 . I note that the site is clearly vacant, it has had no use and is not in use, it is vacant in the ordinary sense of the word. The site is in an area consisting of residential land in which there is a need for housing and for which the site is suitable for housing, permission reference: 21/233 refers. A current application 23/298 for a single house on 'site 5' is the subject of a further information request by RCC. I note other 2023 applications in the immediate vicinity refers to lands that are not zoned but contained within the settlement boundary of Hodson Bay/Barrymore. The legislation is clear, for the purposes of VSL lands should be zoned either residential or regeneration. Even though, I am satisfied

that the site could still be considered a vacant site, and whether zoned residential or regeneration is a hypothetical exercise, when I consider that matters of fact have changed for the lands concerned. I note that the appellants have not sought to engage with these changed circumstances with reference to zoning but have advanced reasons why the site should not be considered in terms of the need for housing notwithstanding an extant permission on the lands for housing.

On balance and having regard to the forgoing I am satisfied that the demand for payment notice for the year 2022 should be cancelled, and the planning authority advised to remove the site from the register.

#### **8.4 Procedural Matter**

The grounds of appeal have set out that the appellants wish to appeal not only the Demand for payment Notice dated 15<sup>th</sup> November 2022 but also that dated 13<sup>th</sup> October 2021 but also Notices dated 25<sup>th</sup> November 2021, 30<sup>th</sup> November 2020 and 17<sup>th</sup> November 2021).

The current appeal relates to the levy year 2022 and I have not considered any matter that concern the levy charge for preceding years, because the time for making an appeal has passed. If the Board are minded to cancel the levy charge for the year 2022 it does not mean that the levy charged for preceding years are also cancelled and should be pursued by the planning authority using the courts as allowed for by the 2015 Act.

#### **8.5 Levy Calculation**

Section 17(1) of the Urban Regeneration Act 2015 states that where in any year there is a change in ownership of a vacant site, the amount of vacant site levy to be charged in respect of that site for that year and the preceding year, shall be zero. Section 17 states that subsection (1) shall not apply where ownership of the site transfers from one company to an associated company.

Section 12(2) and (3) of the 2015 Act states:

*(2) The market value of the vacant site shall be estimated by the planning authority and it shall authorise a person it considers suitably qualified for that purpose to inspect the site and report to it the value thereof and the person having possession or custody of the site shall permit the person so authorised*

*to inspect at such reasonable times as the planning authority considers necessary.*

*(3) Where a person authorised under subsection (2) is not permitted to inspect a property for the purposes of providing an estimate, he or she shall make an estimate of the market value of the site based on his or her knowledge of the site and property and the prevailing local market conditions.*

A Notice of Determination of Market Value was issued on the 4<sup>th</sup> September 2018 stating that the valuation placed on the site is €150,000. No evidence from the appellant has been submitted to show that this valuation was appealed to the Valuation Tribunal. The site was revalued by Roscommon County Council on 16<sup>th</sup> November 2021 and a Section 12(4) Notice of Valuation dated 15<sup>th</sup> November 2021 and issued on 17<sup>th</sup> November 2021 stating that the valuation placed on the site is €200,000. I note that there are no copies of the valuation reports on the file and that the notice appears to predate the valuation. No evidence from the appellant has been submitted to show that this valuation was appealed to the Valuation Tribunal.

It is possible that the procedures employed by the planning authority to value the site, could have formed the basis for an appeal to the Valuation Tribunal. The text contained in the notice, the methodology employed to value the site and the market value price assigned to the site are all matters that could have been reasonably assembled in an appeal to the Valuation Tribunal, with or without further correspondence from the planning authority after the section 12 notice was issued.

Though an appellant may feel they have a strong case to make in relation to the market value of the site, the time for that appeal has passed. At the date of the revaluation notification, the appellant should have appealed directly to the Valuation Tribunal within 28 days. This has not happened and the owners did not make appeal to the Tribunal against a determination made by a planning authority. The scope of an appeal to the Valuation Tribunal is set out in detail at section 13 of the 2015 Act and this section of the Act was highlighted to the owner in the text of the section 12 Notice. In any case, unfortunately for the appellant, the Board has no jurisdiction to adjudicate a determination of market value, that is for the Valuation Tribunal to do.

As set out previously in my report payment for VSL due for the preceding years remain outstanding but are considered beyond the scope of this report.

A Notice of Demand for Payment of 2022 Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to 15<sup>th</sup> November 2022 on the for the value of €14,000.

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. The appellant has not queried the calculation of the levy and it is clear that the simple calculation of the levy demanded is correct.

However, for reasons set out previously in my report I am of the view that the charge demanded cannot be confirmed and should be set at zero for the year concerned, i.e. 2022.

## **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 cancel the Notice of Demand for Payment of Vacant Site Levy as the site was no longer a vacant site as defined by the 2015 Act, on the 30<sup>th</sup> November 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 circumstances under which to define the lands as a Vacant Site and levy the charge had altered as a result of a change in the zoning status in 2022 and so the amount of levy cannot be properly calculated in respect of the vacant site. Furthermore the Board should direct the planning authority to remove the site from 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 fact that the zoning status of the lands changed in the Roscommon County Development Plan 2022-2028 which came into effect on the 19<sup>th</sup> April 2022 prior to issuing of the section 15(4) Demand for Payment Notice.

and thus the Board could not be satisfied that the area of land continued to be a Vacant Site as defined by section 5(1)(b) of the Urban Regeneration and Housing Act 2015 (as amended) on the 2 March 2023, the date on which the appeal was made. The Board considers that it is appropriate that a notice be issued to the planning authority to cancel the entry on the Vacant Site Register and cancel the demand for payment.

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.

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Dáire McDevitt

Senior Planning Inspector

17<sup>th</sup> October 2023