



An
Bord
Pleanála

Inspector's Report ABP-315299-22

Type of Appeal	Appeal against a Section 18 Demand for Payment.
Location	Site at Ballypheason, Roscommon Town, Roscommon.
Planning Authority	Roscommon County Council.
Planning Authority VSL Reg. Ref.	VS/RO/18/4.
Site Owner	Marcat Keane Properties Limited.
Date of Site Visit	16 th October 2023.
Inspector	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 €42,000 for vacant site at Ballypheason in Roscommon Town and identified as VS/RO/18/4. The appeal site has stated registered owners as Marcat Keane Properties Limited for Folio RN44933F it is submitted that that Folio RN41446F is not in their ownership. Local authority records show registered owner for Folio RN441446F is Independent Trustee Company Limited.

Correspondence received from Roscommon County Council dated 5th January 2023 outlines that details relating to “Section 9, Section 11 and Section 18 Notices” refer to a previous landowner as such are not included but details are set out in the case narrative attached.

A revaluation of the site took place on 15th November 2021 and there is reference to a section 15(4) notice issuing to the Solicitor handling the sale of the previously unregistered site and what is now Folio RN4433F.

The narrative presented is summarised as follows (again I wish to highlight that I have had no sight of the relevant documents and this report is based on the documentation on file as forwarded by Roscommon County Council):

Section 7(1) Notice issued to the previous owners (not detail provided regarding who this was) of Folio RN41446F and Unregistered Folio RN44933F on the 28th March 2018, 24th April 2018 and 20th June 2018 (date Site entered onto VSR)

The lands (Folio RN41446F and RN44933F were valued on the 14th August 2018 at €525,000.

With regard to Folio RN44933F a section 12(4) Notice issued to the administrator of the bankruptcy of the previous owner on the 4th September 2018.

With regard to RN44933F a section 15(4) Notice of Demand for Payment issued to the administrator of the bankruptcy of the previous owner on the 25th November 2019 and 30th November 2020, this stated VSL due of €36,750.

With regard to Folio RN44933F a section 12(4) Notice of Valuation issued to the administrator of the bankruptcy of the previous owner on the 15th November 2021 for a valuation of €600,000 for the full site (Folio RN41446F and RN44933F).

With regard to Folio RN44933F a section 15(4) Notice issued on 21 December 2021 to the solicitor handling the sale of the previously unregistered site and which is now Folio RN44933F for a VSL of €21,000 (half of the €42,000 owing for the full site).

The property was sold on 21 December 2021, as such the VSL for 2021 and 2020 was zero rated and therefore paid €18,375 for 2019 (Half of €36,750 due for the whole site for 2019).

A Section 15(4) Demand for Payment of VSL for 2022 for €42,000 issued to the registered owner of RN44933F on the 15th November 2022. This is the Notice which forms part of the current appeal before the Board.

2.0 Site Location and Description

The site with a stated area of c1.05ha is located on the northern side of the N63 within Roscommon town. It is opposite Circle K petrol station and to the west of Gareys Building Providers.

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. Based on the information to hand it is not clear if the planning authority assessed the site under section 5(1)(a) or 5(1)(b) of the Act. The planning authority have submitted that Notices issued to the previous owner (as highlighted above no copy of the Notices or details of the previous owner have been forwarded by RCC with the file documentation). The planning authority further states that 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

Roscommon County Development Plan 2022-2028 came into effect on the 19th April 2022.

The review of the Roscommon Town Local Area Plan 2023-2019 is ongoing.

The lands were zoned Core Town Centre in the Roscommon Local Area Plan 2014-2020.

5.0 Planning History

No recent planning history noted.

PA Ref. 05/51 and 15/282 refer to the overall site.

6.0 Planning Authority Decision

6.1 Register of Vacant Sites Report:

There is no copy of a Vacant Site Assessment Report on file and information forwarded by the planning authority is limited to correspondence associated with the current landowners, ie the appellants.

6.2 Planning Authority Notices:

Asset out in section 1 of this report. The planning authority have only forwarded in the file documentation Notices associated with om the planning authority consider the current owners of the site.

A Section 15(4) Demand for Payment of VSL for 2022 for €42,000 issued to the registered owner of RN44933F on the 15th November 2022.

7.0 The Appeal

7.0 Grounds of Appeal

The landowners have submitted an appeal to the Board against the Demand for Payment. The grounds of the appeal can be summarised as follows:

- The Map denotes one plot of land but correspondence refers to two separate folios (RN41446F and RN44933F).
- Plots listed as ‘unregistered’ and folio RN41446F are not in the appellant’s ownership.
- Notices are invalid and should be withdrawn.

7.1 Planning Authority Response

Correspondence dated 5th January includes copies of planning history and a summary of the Vacant Site history.

Point of note raised include:

- No copies of correspondence included that does not refer to the current owners.
- Ownership changed in 2021.
- Acknowledged that the Folios incorrectly referred to the portion owned by Mercat Keane Properties Limited as “unregistered” which should have indicated that new Folio number of RN44933F, should only have shown the portion owned by them on the map and should have levied a value of only €21,000 owed for the portion of the site.
- Copy of VSR for 2022 included.
- Annual inspection have taken place with the latest on the 8th November 2022.

- Site valued at €600,000, VSL due is €42,000. Appellant liable for half, ie €21,000.

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?

The site was entered onto the Vacant Sites Register in 2018. No Section 9 appeal was made to the Board. I have not details on file of the assessment carried out by the planning authority as to whether the site constituted a vacant site under section 5(1)(a) or 5(1)(b) of the 2015 Act.

I note that the appellants have not disputed that the site is vacant or continues to be vacant at the time of appeal.

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.

The planning authority set out that a Notice of Valuation was issued on the 15th November 2021 to the administrator of the bankruptcy of the previous owner stating that the revaluation placed on the site is €600,000. A copy of the valuation report dated 16//11/2021 is on the file. There is no evidence on file 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 owners (or their representatives) at the time 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.

A Notice of Demand for Payment of 2022 Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to 15th November 2022 on the for the value of €42,000. The Notices was issued to the new registered owners of RN44933F, i.e. the current appellant Marcat Keane Properties Limited This appears to refer to the overall site which also includes Folio RN41446F.

The applicable rate is 7% and it is evident, therefore, that the levy calculation has been correctly calculated for the overall site which includes the two Folios referred to above and the Demand Notice issued under section 15 of the 2015 Act correctly states the levy due based on a site area of c.1.05ha and valuation of €600,000. The appellant has not queried the calculation of the levy and it is clear that the simple calculation of the levy demanded is correct if based on the overall site area for the two folios. However, the appellants have queried the portion of lands included for the purposes of calculating the levy, ie Folio RN44933F and RN41446F. The appellants have submitted details of Folio RN41446F which show that Marcat Keane Properties Limited are not the registered owners and therefore it is submitted should not be liable for the VSL relating to this folio. The planning authority in their correspondence received by An Bord Pleanála on 9th January 2023 have stated “It is acknowledged that the Folios incorrectly referred to the portion owned by Marcat Keane Properties Limited as “unregistered” which should have indicated that new Folio number of RN44933F, should only have shown the portion owned by them on the map and should have levied a value of only €21,000 owed for the portion of the site’.

Based on the information on file and statements made by Roscommon County Council in the correspondence dated 3rd January and received by An Bord Pleanála on the 9th January 2023. It is clear that the planning authority considered the two Folios, RN44933F and RN41446F, as one overall site for the purposes of revaluation and subsequent section 15(4) Notice. The Section 15(4) Notice Demand for Payment issued to Marcat Keane Properties Limited on the 15th November 2022 includes land that are not the appellant’s ownership and furthermore the vacant site levy amount due is incorrect as is based on a calculation for the Vacant Site Levy for the wrong area which does in itself have a market valuation on file. A market valuation for each Folio should have been carried out when it was not clear if both

were in the same ownership and a subsequent Section 15(4) Notice should have issued for the relevant Folios separately and for the correct amount due.

As such 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 the demand for payment of the vacant site levy under Section 15 of the Urban Regeneration and Housing Act 2015 is 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 Section 15(4) Notices refer to lands that are not in ownership/control of Marcat Keane Properties Limited and so the amount of levy was not properly 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 planning authority submission,
- (d) The report of the Planning Inspector,
- (d) The fact that the Section 15(4) Demand for Payment Notices refer to lands outside the control/ownership of Marcat Keane Properties Limited and so the amount of levy cannot be properly calculated in respect of the vacant site.

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 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.

Dáire McDevitt

Senior Planning Inspector

20th October 2023