



An  
Bord  
Pleanála

## Inspector's Report ABP-315407-22

---

<b>Type of Appeal</b>	Appeal against a Section 18 Demand for Payment
<b>Location</b>	Lands at Carrignafoy, Cobh, Co. Cork.
<b>Planning Authority</b>	Cork County Council.
<b>Planning Authority VSL Reg. Ref.</b>	VS-0097.
<b>Site Owner</b>	Frank & Martin O'Mahony.
<b>Date of Site Visit</b>	29 <sup>th</sup> September 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 Cork County Council, stating their demand for a vacant site levy for the year 2021 amounting to €157,500 for vacant site at Carrignafof, Cobh, Co. Cork and identified as VS-0097. The appeal site has two stated registered owner Frank O'Mahony and Martin O'Mahony.

Notices of Proposed Entry on the Vacant Sites Register was issued to Frank O'Mahony and Martin O'Mahony on 20<sup>th</sup> November 2020. On the 26<sup>th</sup> February 2021 Notices of Entry on the Vacant Sites Register was issued to Frank O'Mahony and Martin O'Mahony. These section 7(3) notice was not appealed to the Board.

A valuation pertaining to the site was issued by Cork County Council on the 18<sup>th</sup> November 2021 to Frank O'Mahony and Martin O'Mahony. The value of the subject site is stated to be €2,250,000. These 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 Frank O'Mahony and Martin O'Mahony on the 2<sup>nd</sup> December 2022 for the value of €157,500. The appellants (Frank O'Mahony and Martin O'Mahony) 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 portion of the lands identified as VS-0097 zoned residential have an area of c.5.16ha are located c.1.3 km to the north of Cobh town centre on the periphery of a built-up residential area. The site comprises a number of agricultural fields, with the College Manor residential estate bounding the site to the south, Cobh GAA grounds and a water tower located to the south-east, and agricultural lands to the north and west. The southern portion of the lands outlined under VS-0097 refers to lands zoned 'Green Infrastructure' and existing development and excluded for the purposes of VSL.

## **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 26<sup>th</sup> February 2021 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

With effect from 6<sup>th</sup> June 2022 the Cork County Development Plan 2022 – 2028 replaced the 8 Municipal District Local Area Plans adopted in 2017, including the Cobh Municipal District LAP. Chapter 2 of Volume 4 of the Development Plan includes the Cobh Municipal District.

The northern portion of the lands are identified as VS 0097 which are the subject of the Demand for Payment Notice are zoned CH-R-11 Medium A Density Residential.

### 5.0 Planning History

**PA Ref. DRZLT 473703749 (ABP Ref. 316368-23)** refers to an appeal under section 653J(1) of the Taxes Consolidation Act 1997, as amended, against the inclusion of land on the Residential Zoned Land Tax Map.

**PA Ref. 23/4526** refers to a current application for 92 no. residential units and all associated site works. Comprises Phase 1 of a two-phase residential development. (application currently on Further Information).

## **6.0 Planning Authority Decision**

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

There are no copies of site investigations, reports or photographs on the file.

### **6.2 Planning Authority Notices:**

A Notice of Determination of Market Value was issued to Frank O'Mahony and Martin O'Mahony on the 18<sup>th</sup> November 2021 that the valuation placed on the site is € 2,250,000 and instructions to make an appeal to the Valuations Tribunal, accompanied by a map with the site outlined.

A section 7(3) Notice issued on 26<sup>th</sup> February 2021 advising the owners that their site had been placed on the register.

A section 7(1) Notice issued on the 20<sup>th</sup> November 2020 advising the owners that their site had been identified as a vacant site and invited submissions, accompanied by a site map.

A Section 15 Demand for Payment Notice of 2021 Vacant Site Levy issued to Frank O'Mahony and Martin O'Mahony on the 2<sup>nd</sup> December 2022 advising the owner that of the amount of €157,500 was due for the year 2021. 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 year 2021. The grounds of the appeal can be summarised as follows:

- It is submitted that the market valuation for the period 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2021 is grossly over estimated. Based on the 5.2 ha that is zoned residential, a valuation of €432,000 (or over €175,000 per acre) applies. Copy of a recent sale of zoned lands in Cobh submitted to support this.

- Lands should be removed from the Vacant Site Register as the boundaries are incorrectly identified. Of the c.15.8 ha site only c.5.2ha are zoned residential (remained is either built up or not zoned residential). As the majority of the site is either built up or not zoned residential it should be removed and the demand for payment cancelled.
- The valuation is flawed and should be considered null and void.
- Significant inconsistencies in the Council's VSR.
- Public infrastructure is not available.
- The demand for payment dated 2<sup>nd</sup> December 2022 was incorrectly made as it referred to VS-0021 which relates to lands in Carrigtwohill not owned by the appellants.
- Two separate letters, one to Frank O'Mahony and one to Martin O'Mahony, seeking payment of €157,500 is confusing and implies two separate payments required.
- As VS-0021 is not owned by the appellants, the demand should be dismissed.

## **7.2 Planning Authority Response**

Response dated 18<sup>th</sup> January 2023, comments are summarised as follows:

- The market valuation was carried out by a suitably qualified person, whom inspected the site and prepared a report to the value thereof. The Market Valuation carried out in 2021 related to a plot with an area of c.5.2 hectares. Based on a market value in the region of €175,000/acres, the Market Valuation of €2,250,000 was submitted to the planning authority in 2021.
- The valuation carried out in 2021 considered the 2017 Cobh Municipal District Local Area Plan and the Draft Cork County Development Plan 2021 South Cork- Part 1 Carrigaline MD and Cobh MD.
- The site identified as VS-0097 (folio reference CK32369) does include areas outside of the portion zoned residential which represents the extent of the landownership folio. At Valuation stage only the lands zoned for residential development were accounted for.

- The entry on to the VSR was not appealed.
- The Cork County Development Plan 2022 came into effect on the 6<sup>th</sup> June 2022 Table D3- Residential Lands NPF Tiering. The site in Cobh is CH-R-11 and is Tier 1 and considered serviced.
- The incorrect reference VS-0021 was included in the bod of the letter. The correct Reference VS-0097 and address was used in the letter.
- Only one demand for payment is made for this vacant site entry, however as the site is in joint ownership the demand letters were issued to both landowners.

## **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 2021.

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

A Section 7(3) Notice of Entry on the Vacant Sites Register was issued on the 26<sup>th</sup> February 2021. 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

under section 5(1)(a). Following an assessment the site was placed on the register, these matters have not changed.

The appellants dispute that site continues to be vacant at the time of appeal as the lands are not serviced. Based on the information presented I have no evidence that this is the case. I further note the lands are identified as Tier 1 in the current County Development Plan and there is a current application for a residential development with Cork County Council for these lands.

Based on the information submitted and the evidence presented by the planning authority I am satisfied that for the period concerned, 2021, the site remained a vacant site.

#### **8.4 Levy Calculation**

A Notice of Determination of Market Value was issued to Frank O'Mahony and Martin O'Mahony on the 18th November 2021 with a value of € 2,250,000. The appellants have submitted that lands not zoned residential are included within the boundaries of VS-00097, the local authority in their submission dated 18<sup>th</sup> January 2023 state 'the site identified as VS-0097 (folio reference CK32369) does include area outside of the portion zoned residential which represents the extent of the landownership folio. At valuation stage, section 12 of the Urban Regeneration and Housing Act 2015 as amended, only the lands zoned for residential development were accounted for". 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 the appellant may feel they have a strong case to make in relation to the market value of the site. At the date of the valuation notification (18<sup>th</sup> November 2021), the landowners should have appealed directly to the Valuation Tribunal within 28 days. This has not happened and there is no record that the landowners at the time made an 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 appellants, 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 Vacant Site Levy for the year 2021 under Section 15 of the Urban Regeneration and Housing Act was issued to Frank O'Mahony and Martin O'Mahony on the 2<sup>nd</sup> December 2022 for the value of €157,500 for the year 2021 relating to lands identified as VS-0021, which refers to the current appeal before the Board. 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 appellants submit that the Demand for Payment Notice should be cancelled as the first paragraph refers to 'ref VS-0021 at Carrignafof, Cobh, Co. Cork'. I acknowledge that VS-0021 refers to lands at Carrigtwohill and in different ownership. I am of the view that this is a typographical error as the correspondence clearly identified the lands as VS-0097 in its subject matter and refers to the correct postal address which states 'ref VS-0021 at Carrignafof, Cobh, Co. Cork'. Having regard to the foregoing I consider the Notices valid and as such the Demand for payment for the year 2021 should be confirmed,

## **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 as of the 1<sup>st</sup> of January 2021 and was a vacant site on 21<sup>st</sup> December 2022, the date on which the appeal was made. 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, 2021, the Board is satisfied that the site was a vacant site on the 1<sup>st</sup> of January 2021 and was a vacant site on 21<sup>st</sup> December 2022, the date on which the appeal was made 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.*

---

Dáire McDevitt

Senior Planning Inspector

2<sup>nd</sup> October 2023