



An
Bord
Pleanála

Inspector's Report ABP-316036-23

Type of Appeal	Section 18 Appeal against demand for payment of vacant site levy
Location	The Murrough, Wicklow
Planning Authority	Wicklow County Council.
Planning Authority VSL Reg. Ref.	VS/W/06
Appellant	Blessville Ltd.
Planning Authority Decision	Demand payment
Date of Site Visit	3 rd September 2023
Inspector	Stephen J. O'Sullivan

1.0 Introduction

- 1.1. This is an appeal under section 18 of the Urban Regeneration and Housing Act 2015, as amended, against a demand by the planning authority under section 15 of that act for the payment of €28,000 as a levy for the year 2022 in respect of a site on the Vacant Sites Register at the Murrough, Wicklow.

2.0 Site Location and Description

- 2.1. The site lies 0.5km north of the harbour at Wicklow. The shore lies c50m to the east. The land between the site and shore has been laid out for public recreation with a promenade and a dog park just east of the site. The public street runs along the western side of the site. The stated area of the site is 0.29ha. It is occupied by two functional, flat roofed buildings on its southern part and a walled yard on its central and northern parts. The buildings on the site adjoin another two storey building to the south with a pitched roof and windows that presents a traditional façade to the south. It is occupied by the Education and Training Board (ETB). There is a modern 3 storey office building across the street to its west. Otherwise the plots in the vicinity of the site are occupied by functional buildings with a functional character similar to the buildings on the site. Footpaths along the street are intermittent. The street along the Murrough runs from the harbour past the site to a modern road and bridge to the north which would have significantly improved the access to a previously isolated spit of land between the sea and an inlet along the Leirim River.

3.0 Statutory Context

3.1. Urban Regeneration and Housing Act 2015, as amended

- 3.1.1. Section 5(1)(b) of the act provides criteria to define a vacant site for regeneration land which refers to
- Whether the site or a majority of it is vacant or idle, and
 - Whether the site being vacant or idle has adverse effects on existing amenities or reduces the amenity provided by public infrastructure and facilities within meaning of section 48 of the

planning act in the area in which the site is situated or has adverse effects on the character of the area

3.1.2. Section 6(6) of the act provides that the council shall determine whether or not 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 for the purposes of this Part by reference to whether—

(a) land or structures in the area were, or are, in a ruinous or neglected condition,

(b) anti-social behaviour was or is taking place in the area, or

(c) there has been a reduction in the number of habitable houses, or the number of people living, in the area,

and whether or not these matters were affected by the existence of such vacant or idle land.

3.1.3. Section 11 of the act requires the planning authority to give notice to the owner of each site on the register before 1st June 2018 that the site was registered on 1st January 2018 and that a levy shall be charged every year in accordance with section 15 of the act. The notice shall also inform the owner that submissions may be made within 28 days which shall be considered by the planning authority and if the authority is satisfied then it shall cancel the entry. If the planning authority does not cancel the entry then it shall give notice to the owner that it may appeal that decision to the board within 28 days.

3.1.4. Section 15 requires a levy to be charged for each year beginning in 2018 in respect of each site on the register which shall be payable on a demand issued by the planning authority. Section 16(1) states that the amount of a levy for 2018 shall be 3% of the market value determined under section 12, and 7% for 2019 and each subsequent year.

3.1.5. Section 18(1) says that an owner who receives a demand for payment under section 15 may appeal it to the board within 28 days. Section 18(3) says where the board determines that the site was no longer vacant on the 1st January of the year concerned it shall give notice to the planning authority to cancel the entry on the

register. Section 18(2) says that the burden of showing that the site was no longer a vacant site is on the owner of the site.

3.2. Development Plan Policy

3.2.1. Wicklow and Rathnew Town Development Plan 2013-2019

3.2.2. The site was zoned for mixed use under objective MU under a development plan made in 2013. It is also part of a designated opportunity area at the Murrough where the plan seeks to facilitate the emergence of a new urban quarter with a distinctive identity and character.

3.2.3. Wicklow County Development Plan 2022-2028

3.2.4. The core strategy sets a population target of 18,515 for Wicklow town in 2028, up from the recorded population of 14,114 in 2016. Based on those figures the strategy calculates that there is an excess of 55ha of zoned land outside the built up area of the town. It is an objective of the development plan to make a local area plan for the town but one has not been made yet.

4.0 Planning History

4.1. ABP-303649-19: On 7th January 2020 the board confirmed a demand for payment of a vacant site levy in respect of the current site for 2018 after it had been appealed. The board's decision indicates that it concluded that the site remained a vacant site having regard to the neglected condition of the site which has adverse effects on the character of the area and reduces the amenity provided by existing public infrastructure and facilities.

5.0 Planning Authority Decision

5.1. Planning Authority Notices

5.1.1. A report from the council's planner dated 25th January 2023 stated that the site had been inspected on the 23rd January 2023 and remains vacant. There had been no material change in its condition since it was entered on the register in 2017 or since the board's inspection in 2019. It recommended that a notice of demand for the

payment of the levy be issued. The amount of the levy should be €28,000 which is as 7% of the €400,000 that the site has been valued at. The council issued a notice under section 15 of the act in line with its planner's report on 10th February 2023.

6.0 The Appeal

6.1. The grounds of the appeal state can be summarised as follows—

- The site is not vacant or idle. The owner is using it to store, repair and operate machinery. The owner is paying commercial rates and water and electricity bills for the site. It is also used for car parking by occupiers of the office building across the street.

6.2. Planning Authority Response

The response from the council states that repeated inspections of the site indicate that it remains vacant, the most recent of which was on 23rd January 2023. The condition of the site has adverse effects on the visual character and amenities of the area .

6.3. Further Responses

The appellant's response to the council's response states that it is part of the Glenhaven Group and the owner of a large portfolio of properties in the county and is including the office building across the street which gives rise to a need to store and maintain equipment, machinery and materials on the current site. The use does not require staff to be on the site at all times. Electricity and water bills can be provided on request. The yard is used for car parking by users of the office building across the street. A copy of an agreement for such use is submitted dated 2016. The vacant floor in that building has been advertised to let. The structures on the site have been painted to match the adjoining ETB building do not detract from the streetscape or the character of the area.

7.0 Assessment

7.1. This appeal falls to be determined on the basis of the criteria set out in section 18(3) and 18(4) of the act which are

- whether the site was no longer a vacant site on 1st January of the year concerned or the date the appeal was made on 19th March 2023 and
- whether the amount of the levy has been incorrectly calculated by the planning authority,

with the burden on the appellant to show that the criteria have been met.

- 7.2. The site has been valued at €400,000. The board does not deal with appeals against valuations. The amount of the payment is 7% of the value of the site and has been correctly calculated
- 7.3. The grounds of appeal refer to the painting of the structures on the site. However it was clear at the time of inspection that the appearance and physical condition of the site is the same as it was in 2019 when the board determined under ABP-303649-19 that its condition had adverse effects on the character of the area and reduced the amenity provide by existing public infrastructure and utilities. Since then the public utilities in the immediate vicinity of the site have been improved somewhat by the installation of a small dog park immediately to the east of the site. I would therefore advise the board that the condition of the site still has adverse effects on the character of the area and reduces the amenity provide by existing public infrastructure and utilities.
- 7.4. In relation to use, the council has inspected the site on several occasions, most pertinently on 31st January 2022 and 23rd January 2023, and has formed and stated a clear conclusion that the site remained vacant in the period to which the appealed demand relates. The appeal includes assertions that the site was not vacant or idle in that period. This distinguishes the current appeal from that made under ABP-303649-19 when no such assertion was made. Grounds have therefore been provided that would enable the board to come to a different conclusion to the one it reached in the last case as to whether the site remains vacant. No such use was apparent at the time of my inspection of the site. However this is not determinative of the issue as the nature of the use asserted by the appellant would not involve persons being continuously present on the site. Nevertheless it is consistent with the reports from repeated inspections of the site by the council. I therefore conclude that the owner of the site has not discharged the burden placed upon it by section 18(2) of the act to show that the site was not a vacant or idle. I therefore advise the board

that the site was a vacant site on the relevant dates and recommend that the demand for payment be confirmed.

8.0 Recommendation

8.1. I recommend that in accordance with Section 18 (3) of the Urban Regeneration and Housing Act 2015 (as amended), the Board confirm that the site was a vacant site as of the 1st January 2022 and was a vacant site on 10th March 2023, the date on which the appeal was made; and that 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; and that the demand for payment of the vacant site levy under Section 15 of the Urban Regeneration and Housing Act 2015 should, therefore, be confirmed.

9.0 Reasons and Considerations

Having regard to:

- a) The information placed before the Board by the Planning Authority in relation to the entry on the Vacant Sites Register pertaining to the site,
- b) The grounds of appeal and subsequent submissions from the Planning Authority and the appellant,
- c) The report of the Planning Inspector,
- d) The vacancy and idleness of the site which contributes to the neglected condition of the area and has adverse effects on the character of the area and reduces the amenity provided by existing public infrastructure and facilities, and
- e) The calculation of the levy for 2022 at 7% of the duly determined site value,

the Board is satisfied that the site was a vacant site on the 1st of January 2022 and was a vacant site on 10th March 2023, 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.

Stephen J. O'Sullivan
Planning Inspector

24th September 2023