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Bord  
Pleanála

## Inspector's Report ABP-316190-23

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<b>Type of Appeal</b>	Appeal against a Section 18 Demand for Payment
<b>Location</b>	Site (beside Druids Well Pub), Killmacullagh, Main Street, Newtownmountkennedy.
<b>Planning Authority</b>	Wicklow County Council
<b>Planning Authority VSL Reg. Ref.</b>	VS/NTMK/01
<b>Site Owner</b>	Papaver Limited.
<b>Date of Site Visit</b>	10 <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 Wicklow Council, stating their demand for a vacant site levy for the year 2022 amounting to €36,700 for vacant site beside Druids Well Pub, Killmacullagh, Main Street, Newtownmountkennedy and identified as VS/NTMK/01. The appeal site has one stated registered owner Papaver Limited.

A Notice of Proposed Entry on the Vacant Sites Register was issued to Brian Donoghue, Michael Dwyer and Tom Murphy on 26<sup>th</sup> July 2017. Correspondence dated 21<sup>st</sup> February 2018 from WCC requesting detail of new owners. A Notice of Proposed Entry on the Vacant Sites Register was issued to Ciaran Smyth on 14<sup>th</sup> March 2018. On the 26<sup>th</sup> July 2018, the Notice of Entry on the Vacant Sites Register was issued to Brian Donoghue, Michael Dwyer and Tom Murphy. This section 7(3) notice was not appealed to the Board.

A valuation pertaining to the site was issued by Wicklow County Council on 20<sup>th</sup> December 2019 to Brian Donoghue, Michael Dwyer and Tom Murphy. The value of the subject site is stated to be €525,000. This was not appealed to the Valuation Tribunal.

Correspondence dated 13<sup>th</sup> February 2020 from WCC to appointed receiver seeking details of new ownership.

Wicklow County Council in their documentation refer to a Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act for payment for 2019 issued. Wicklow County Council noted a change of ownership occurred in 2020 and no levy paid by previous owners. There is no copy of a Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act for payment for 2019 on file.

Wicklow County Council did not issue Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act for payment for 2020. And have stated that no Levy payable for year 2020 as change of ownership occurred in 2020.

A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act for payment for 2021 was issued to Papaver Limited on the 27<sup>th</sup> January 2022 for the value of €36,750. This was appealed but the appeal was deemed to be invalid.

A Notice of Demand for Payment of Vacant Site Levy for the year 2022 under Section 15 of the Urban Regeneration and Housing Act was issued to Papaver Limited on the 10<sup>th</sup> March 2023 for the value of €36,750. The appellant (Papaver Limited) 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 c. 0.6ha is located beside the Druids Well Pub in Killmacullagh on the northern side of the Main Street in Newtownmountkennedy.

## **3.0 Statutory Context**

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

3.1.1 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> July 2018 and the site was subsequently entered onto the register on that date.

3.1.2 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 Wicklow County Development Plan 2022-2028

The site is zoned **TC Town Centre** and **Open Space**.

**TC Town Centre** has a stated objective 'to provide for the development and improvement of appropriate town centre uses including residential, retail, commercial use and civic use.

## 5.0 Planning History

**PA Ref. 23175 (ABP Ref.317785-23)** refers to a current appeal relating to an application for the construction of 27 dwellings, car parking and associated site works. Appeal lodged August 2023. WCC Recommendation to grant permission.

**PA Ref. 23175 (ABP Ref.317723-23)** refers to an application for the construction of 27 dwellings, car parking and associated site works. Appeal lodged August 2023. WCC. INVALID.

**PA Ref. VS/NTMK/01 (ABP Ref.313715-22)** refers a June 2022 section 18 appeal against Demand for Payment of Vacant Site Levy. INVALID.

**PA Ref. 22484** refers to a 2022 decision to refuse permission for the construction of 27 dwellings, car parking and associated site works.

**PA Ref. 215344** refers to a 2021 application for the construction of 26 dwellings, car parking and associated site works. Withdrawn

**PA Ref. 20815** refers to a 2020 application for the construction of 24 dwellings, car parking and associated site works. Withdrawn

## 6.0 Planning Authority Decision

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

A Report (19<sup>th</sup> July 2018) was prepared for the site outlining the date of the visits to the site, description of the area and the type of site for the purposes of the Act which in this case is Town Centre. The following key points are noted:

Site visits were undertaken July 2017 and February 2018

The Planning Authority stated that the site was vacant for in excess of 12 months.

**In terms of criteria set out in section 5(1)(b) and section 6(6) it is detailed that:**

1. the site consists of regeneration and as defined by objective HD19 of the County Development Plan.
2. The majority of the site is vacant or idle.
3. 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.

## **6.2 Planning Authority Notices:**

The file forwarded by WCC contains correspondence pertaining to the change of ownership.

A Notice of Determination of Market Value was issued to Brian Donoghue, Michael Dwyer and Tom Murphy. on the 20<sup>th</sup> December 2019 that the valuation placed on the site is €525,000 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> July 2018 advising the owners that their site had been placed on the register.

A section 7(1) Notice issued on the 26<sup>th</sup> July 2017 and 14<sup>th</sup> March 2018 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 on the 27<sup>th</sup> January 2022 advising the owner that of the amount of €36,750 was due for the year 2021.

A Section 15 Demand for Payment Notice of 2021 Vacant Site Levy issued on the 10<sup>th</sup> March 2023 advising the owner that of the amount of €36,750 was due for the year 2022.

## **7.0 The Appeal**

### **7.1 Grounds of Appeal**

The landowner has submitted an appeal to the Board, against the decision of Wicklow 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 appellants purchased the lands in September 2020 which is after the first date the land were placed on the Vacant Site Register in July 2018.
- The lands are zoned TC – Town Centre.
- It is their intention to develop the lands in accordance with a planning application lodged under PA Ref. 23/175 on the 24<sup>th</sup> February 2023.
- The appellants have lodged number of applications for the lands which have been either refused or withdrawn (20/815, 21/534 and 22/484).
- The lands are not vacant with vehicular access with a right of way in place to access to the adjoining pumping station for Council and Irish Water access and egress to same.
- The lands should not be included on the vacant site register and the levy rescinded.

### **7.2 Planning Authority Response**

Response dated 13<sup>th</sup> April 2023 Comments are summarised as follows:

- Planning application PRR 23/175 was lodged on the 23<sup>rd</sup> February 2023 and due for decision the 20<sup>th</sup> April 2023.
- The landowner was notified on the 20<sup>th</sup> December 2018 of the market value. To date no notification of an appeal by the landowner has been received from the Valuations Tribunal in relation to the subject site.
- Refer to the Senior Planner Report on file for further comments.

## **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 26<sup>th</sup> July 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 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 was vacant and that the site continues to be vacant at the time of appeal as there is vehicular access with a right of way in place to access to the adjoining pumping station for Council and Irish Water access and egress to same.

Based on the information submitted and the evidence presented by the planning authority I am satisfied that for the period concerned, 2022, the site remained a vacant site.

### **8.4 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 proceeding 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.

I note that the appellants purchased the land in September 2020, therefore excludes the year 2020 which is not the relevant year in this instance and the levy for which is the subject of this appeal before the Board refers to the year 2022. I am satisfied that any change in ownership that took place in 2020 does not affect the 2022 levy.

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 to the previous owners (Brian Donoghue, Michael Dwyer and Tom Murphy) the 20<sup>th</sup> December 2019 with a value of €525,000. 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, or that this related to matters predating their purchase of the lands. The levy is attached the land not the landowner. the time for that appeal has passed. At the date of the valuation notification (20<sup>th</sup> December 2019), 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 Papaver Limited on the 27<sup>th</sup> January 2022 for the value of € 36,700. This was appealed under ABP Ref. 313715-22, the appeal was deemed invalid.

A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act for the year 2022 was issued to Papaver Limited on the 10<sup>th</sup> March 2023 for the value of €36,700 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.

## **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 of January 2022 and was a vacant site on 3<sup>rd</sup> April 2023, 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 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 2019,
- (g) There has been no change in the ownership of the site during the period concerned, 2022, the Board is satisfied that the site was a vacant site on the 1<sup>st</sup> of January 2022 and was a vacant site on 3<sup>rd</sup> April 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.

*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

10<sup>th</sup> September 2023