



An
Bord
Pleanála

Inspector's Report ABP-316248-23

Type of Appeal	Appeal against a Section 18 Demand for Payment
Location	Lands measuring 0.08 ha, Main Street, Newtownmountkenny.
Planning Authority	Wicklow County Council.
Planning Authority VSL Reg. Ref.	VS/NTMK/11.
Site Owner	HT Carroll Limited.
Date of Site Visit	10 th September 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 Wicklow Council, stating their demand for a vacant site levy for the year 2022 amounting to €21,000 for vacant site on the Main Street, Newtownmountkennedy and identified as VS/NTMK/11. The appeal site has one stated registered owner HT Carroll Limited.

A Notice of Proposed Entry on the Vacant Sites Register was issued to Aquafawn Ltd on 26th July 2017. On the 1st December 2017 the Notice of Entry on the Vacant Sites Register was issued to Aquafawn Ltd. This section 7(3) notice was not appealed to the Board.

A valuation pertaining to the site was issued by Wicklow County Council on the 26th July 2018 to Aquafawn Ltd. The value of the subject site is stated to be €300,000. This was not appealed to the Valuation Tribunal.

A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act for payment for 2018 was issued to Aquafawn Ltd on the 9th January 2019 for the value of €9,000.

A Certificate of Discharge of Vacant Sitey Levy was issued 21st March 2019 for the year 2018 (€9000).

A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act for payment for 2019 was issued to Aquafawn Ltd on the 21st January 2020 for the value of €21,000.

Correspondence received by WCC on the 26th March 2020 includes a copy of Deeds of Transfer. New owners are noted as HT Carroll Limited. Correspondence also seeking confirmation that the demand for payment for the 2019 is withdrawn and that HT Carroll Limited not liable for 2019 and 2020.

WCC Memo dated 27th March 2020 recommended the Demand for payment for 2019 be withdrawn.

No Notice of Demand for Payment of Vacant Site Levy for 2020 issued.

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 HT Carroll Ltd on the 17th January 2022 for the value of €21,000. Appealed under ABP 312750-22, deemed invalid.

Correspondence to WCC seeking Notice for Demand of Payment be cancelled for the year 2021 as lands were purchased on the 29th June 2021. Further correspondence from the appellants to WCC dated 26th January 2022 acknowledged this was an error and referred to an adjoining site.

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 HT Carroll Ltd on the 13th March 2023 for the value of €21,000. The appellant (HT Carroll Ltd) 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. 0.08ha is on the southern side of the Main Street in Newtownmountkenny. Referred to as the 'Bawn House and PB O'Byrne site'.

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 1st December 2017 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 Wicklow County Development Plan 2022-2028

The site is zoned **TC Town Centre**.

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. 20818 refers to a 2021 grant of permission for conversion of Bawn House to 2 no. apartments. Change of Use of PB O'Byrne to a live/work 1 bed residential unit.

PA Ref. VS/NTMK/11 (ABP Ref.312750-22) refers a 2022 section 18 appeal against Demand for Payment of Vacant Site Levy. INVALID.

6.0 Planning Authority Decision

6.1 Register of Vacant Sites Report:

Initial investigation report and report on submission prepared and recommendation to enter the site in the Vacant Site Register made.

Subsequent reports and Site inspections carried out in relation to the Demand for Payment notices.

Site Inspection photographs noted for the 20th December 2018, 10th January 2020, 14th April 2021, 12th January 2022 and 23rd January 2023.

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 Aquafawn Ltd on the 26th July 2018 that the valuation placed on the site is €300,000 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 1st December 2017 advising the owners that their site had been placed on the register.

A section 7(1) Notice issued on the 26th July 2017 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 2018 Vacant Site Levy issued to Aquafawn Ltd on the 9th January 2019 advising the owner that of the amount of €9,000 was due for the year 2018. A Certificate of Discharge of Vacant Sitey Levy was issued 21st March 2019 for the year 2018 (€9,000).

A Section 15 Demand for Payment Notice of 2019 Vacant Site Levy issued to Aquafawn Ltd on the 21st January 2020 advising the owner that of the amount of €21,000 was due for the year 2019.

WCC Memo dated 27th March 2020 recommended the Notice for Demand of Payment for 2019 be withdrawn.

A Section 15 Demand for Payment Notice of 2021 Vacant Site Levy issued to HT Carroll Ltd on the 17th January 2022 advising the owner that of the amount of €21,000 was due for the year 2021. Appealed under ABP 312750-22 deemed invalid.

A Section 15 Demand for Payment Notice of 2022 Vacant Site Levy issued to HT Carroll Ltd on the 13th March 2023 advising the owner that of the amount of €21,000 was due for the year 2022. 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 2022. The grounds of the appeal can be summarised as follows:

- Substantial works have been carried out, up to and including the first fixing of electrical wiring on the 2 units in the main house to be retained. Also applied for connection to the ESB network. It is their intention to bring the 2 units to the rental market over the next 4/5 months.
- The site has been enlarged by the acquisition of the adjacent empty site and architects are developing a larger scheme for the entire site. To date the focus of the appellants works has been the old house which they were obliged to retain.
- Photographs and invoices can be supplied if required.

7.2 Planning Authority Response

Response dated 24th April 2023 Comments are summarised as follows:

- Planning application PRR 20/818 was granted permission in February 2021,
- The landowner was notified on the 26th July 2018 of the market value. To date no notification of an appeal by the land owner 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 26th 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 site continues to be vacant at the time of appeal as it is submitted substantial works have been carried out to the main house (Bawn House) and works are ongoing to bring the 2 units to the rental market within 4-5 months of the date of the appeal (April 2023). I carried out a site inspection on the 10th September 2023 and the structures remain vacant, I also refer to Board to the photographs taken on the 23rd January 2023 included in the WCC Planners Report dated 24th February 2023.

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 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 (Aquafawn Ltd) the 26th July 2018 with a value of €300,000. 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 (26th July 2018), 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 HT Carroll Ltd on the 17th January 2022 for the value of € 21,000. This was appealed under ABP Ref. 312750-22, 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 HT Carroll Ltd on the 13th March 2023 for the value of €21,000 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 11th 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 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 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 1st of January 2022 and was a vacant site on 11th 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.

Dáire McDevitt

Senior Planning Inspector

10th September 2023