



An  
Bord  
Pleanála

## Inspector's Report ABP-317507-23

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<b>Type of Appeal</b>	Appeal against a Section 18 Demand for Payment for 2021
<b>Location</b>	The Malt House, Canal Harbour, Monasterevin, Co. Kildare
<b>Planning Authority</b>	Kildare County Council.
<b>Planning Authority VSL Reg. Ref.</b>	VS-Mon-05
<b>Site Owner</b>	Clonmel Enterprises
<b>Date of Site Visit</b>	25 <sup>th</sup> October 2023
<b>Inspector</b>	Paul O'Brien

## **1.0 Introduction**

This appeal refers to a Section 15 Notice of Demand for Payment of Vacant Site Levy issued by Kildare County Council, stating their demand for a vacant site levy for the year 2021 amounting to €42,000 for a vacant site at The Malt House, Canal Harbour, Monasterevin, Co. Kildare and identified as VS MON-05. The registered owner of the appeal site is Clonmel Enterprises, Unit R, M7 Business Park, Newhall, Naas, Co. Kildare.

Notices of Proposed Entry on the Vacant Sites Register was issued to Clonmel Enterprises on 21<sup>st</sup> December 2020. The section 7(3) notice was appealed to the Board, who decided by Order dated 11<sup>th</sup> April 2022 to issue a notice confirming the entry of these lands on to the Vacant Sites Register.

A valuation pertaining to the site was issued by Kildare County Council on the 2<sup>nd</sup> of March 2023 to Clonmel Enterprises Ltd. The value of the subject site is stated to be €600,000. The Determination of Market Value 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 Clonmel Enterprises Limited on the 7<sup>th</sup> of June 2023 for the value of €42,000. Clonmel Enterprises Limited have 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 1.1 hectares is located at the north western side of Monasterevin. The subject lands are located to the south east of Canal Harbour on the Grand Canal. The site is an irregular shape and extends eastwards. There is a narrow connection via a short laneway with St. Mary's Lane, which is a short residential cul-de-sac located to the east of Drogheda Street. Drogheda Street connects Canal Harbour with Dublin Street, to the south of Monasterevin.

The site is occupied by a disused Malt House which was previously in use by Jameson Maltings, and associated buildings, several of which are Protected Structures. There was no evidence of recent occupation on the day of the site visit. To the north of the site and Canal Harbour is the Dublin to Cork railway line and Monasterevin station adjoins the northern boundary of the 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 21<sup>st</sup> of December 2020 entering the site onto the register on that date, and following an appeal to the Board, an Order dated 11<sup>th</sup> April 2022 was issued confirming the entry of these lands on to the Vacant Sites Register.

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**

4.1 The Kildare County Development Plan 2023 – 2029 was adopted on the 9<sup>th</sup> of December 2022 and came into effect on the 28<sup>th</sup> of January 2023. Monasterevin is listed as one of the Self Sustaining Towns within ‘Table 2.7 - Settlement Hierarchy and Typology County Kildare.’ The town is also listed as a Level 3 settlement in ‘Table 8.1 – Retail Hierarchy for County Kildare.’

- 4.2 Under UD A3 Monasterevin is listed as one of the urban centres for Kildare County Council to 'Prepare and implement on a phased basis Town/ Village Renewal Masterplans'.
- 4.3 The 'Monasterevin Local Area Plan 2016 – 2022' was adopted in March 2016, and there is no record of any extension in the duration of this plan. The subject lands are zoned 'B: Existing Residential & Infill' with an objective 'To protect and improve existing residential amenity; to provide for appropriate infill residential development and to provide for new and improved ancillary services.'
- 4.4 The following are included on the Record of Protected Structures:
- Warehouse (Malt House), Canal Harbour Ref. B21-27 (NIAH 11816093)  
Described on the National Inventory of Architectural Heritage (NIAH) as a 7 bay three-storey rubble stone warehouse dating from 1850 re-fenestrated in the 1980s. (of Architectural, Historic, Social interest - Regional importance).
  - House (Managers), Canal Harbour Ref. B21-08 (NIAH 11816095). Described on the NIAH as a Detached three-bay former store manager's house c. 1885 built as the residence for the store manager of the former Jameson Maltings. Now disused. (of Architectural, Historical, Social interest - Regional Importance).
  - The stables associated with the former Manager's House are not included on the Record of Protected Structures in their own right, but form part of the 'attendant grounds' of other Protected Structures. The stables are included on the NIAH (NIAH 11816081) described as Detached six-bay single storey stable building, c. 1885, possibly built as a maltings store with series of segmental headed door openings ABP-309297-21 Inspector's Report Page 6 of 17 along door openings (of Architectural, Historical and Social interest – of Regional importance).
  - Other protected structures adjoin the subject site. The adjoining dwelling to the north of the site (old railway Station House - B21-07) and the Church of St. Peter & St. Paul on Drogheda Street and the Convent of Mercy are Protected Structures (B21-21- & B26-43).

- Part of the site is located within an Architectural Conservation Area (ACA) as designated within the plan. Section 16.15.1 states that it is one of the key objectives to protect and enhance Monasterevin's significant and unique built heritage. It is policy (as set out at BH 3) 'To protect and preserve buildings and the spaces between structures that create a distinctive character in the Architectural Conservation Area... Section 6 (xi) states that 'The protection and enhancement of the unique built heritage and streetscape in Monasterevin is one of the core objectives of the plan. Section 6.6.2 (iii) of the Plan acknowledges the excellent and abundant provision of public open space (parks, canal bank, River Barrow etc.) that existing in the town. Section 6.6.2 (vi) acknowledges that there is a high level of vacant and derelict properties in the town particularly in the town centre. The Plan aims to provide the framework for a more integrated approach to new development and regeneration within the town centre. General policies and objectives in relation to flood risk management are set out at Section 6.1.5 of the Plan. Part of the site is located within an Architectural Conservation Area (ACA) as designated within the Plan. Section 16.15.1 states that it is one of the key objectives to protect and enhance Monasterevin's significant and unique built heritage. It is policy (as set out at BH 3) 'To protect and preserve buildings and the spaces between structures that create a distinctive character in the Architectural Conservation Area...'

## **5.0 Planning History**

PA Ref.17/377 / ABP Ref. 303292-18 refers to a 2019 decision to refuse permission for the redevelopment of the subject site/ protected structures and their conversion to residential units (23 units (apartments/ duplex), the construction of 28 house, internal distributor road, parking and all ancillary works. The reasons for refusal related to poor urban design, substandard public realm, and a negative impact on the curtilage

of protected structures and the impact on the designated Architectural Conservation Area.

**PA Ref. 236085** refers to an application for the redevelopment of this site and the provision of 39 residential units and all associated site works. This application was lodged in October 2023 and no decision has been made to date.

## **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. The site was originally included on the Vacant Site Register on the 21<sup>st</sup> of December 2020.

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

A Notice of Determination of Market Value was issued to Clonmel Enterprises Limited on the 2<sup>nd</sup> of March 2023 that the valuation placed on the site is €600,000, as of the 29<sup>th</sup> of April 2022, and instructions as to make an appeal to the Valuations Tribunal, accompanied by a map with the site outlined.

A Notice of Valuation was issued to Clonmel Enterprises Limited on the 2<sup>nd</sup> of March 2023.

A Section 15 Demand for Payment Notice of 2021 Vacant Site Levy issued to Clonmel Enterprises Limited on the 7<sup>th</sup> of June 2023 advising the owner that of the amount of €42,000 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:

- The history of inclusion on the Vacant Site Register is provided.
- The site was occupied by a tenant until a Notice of Motion was issued in August 2021 and the tenants had vacated the property on or before the 16<sup>th</sup> of August

2021. Photographic evidence of tenants having resided here are provided in support of the appeal.

- A number of attempts to bring this site to development have been made and it is proposed to lodge an application in August 2023 (actually lodged in October 2023).
- Appeal on the basis that the site was not vacant during the relevant year.

## **7.2 Planning Authority Response**

The Planning Authority had no further comment to make in respect of the submitted appeal.

## **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 21<sup>st</sup> of December 2020. This notice was appealed to the Bord who upheld the decision of

the Planning Authority to include the site on the register. An 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 continues to be vacant at the time of appeal as there were tenants living on the site. Details are provided of a RTB Determination Order dated 28<sup>th</sup> of September 2018 and a subsequent Court Order dated 17<sup>th</sup> May 2019 seeking the removal of the tenants. The property was occupied until after the 6<sup>th</sup> of May 2021 and was vacated by the 16<sup>th</sup> of August 2021. As already reported, photographic evidence has been provided in support of the appeal.

I note the submitted details, however they do not demonstrate that the site was in residential use. The implication of the submitted documentation is that unauthorised residential occupation of the site may have occurred, but this is not adequately demonstrated. The appellant has not provided evidence that the site was in formal residential use. The submitted photographs only indicate that there the site has been accessed over the period of the appeal.

Based on the information submitted and the evidence presented by the Planning Authority, I am satisfied that for the period/ year concerned, 2021, the site remained a vacant site.

#### **8.4 Levy Calculation**

A Notice of Determination of Market Value was issued to Clonmel Enterprises on the 2<sup>nd</sup> of March 2023 with a value of €600,000. This was not queried in the appeal and a levy of €42,000 was served on the landowner.

#### **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 for the year 2021. 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 for the year 2021 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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**Paul O'Brien**

**Inspectorate**

**4<sup>th</sup> December 2023**