



An
Bord
Pleanála

Inspector's Report ABP-317868-23

Type of Appeal	Appeal against a Section 18 Demand for Payment.
Location	Granges Road, Ayresfield, Kilkenny
Planning Authority	Kilkenny County Council.
Planning Authority VSL Reg. Ref.	VSR19-08
Site Owner	Glenveagh Homes.
Planning Authority Decision	Demand for payment of Vacant Site Levy.
Inspector	Stephen J. O'Sullivan

1.0 Introduction

- 1.1. This appeal refers to a Section 15 Notice of Demand for Payment of Vacant Site Levy issued by Kilkenny County Council stating their demand for a vacant site levy for the year 2022 amounting to €245,000 for vacant site lands at Granges Road, Kilkenny, and identified as VSR19-08. The notice was issued to Glenveagh Homes Limited and dated 28th July 2023. On 24th August 2023 Glenveagh Homes Limited appealed the Demand for Payment Notice issued pursuant to Section 15 of the Urban Regeneration and Housing Act. The demand indicates that the amount of the levy is 7% of a site value of €3,500,000.
- 1.2. A Notice of Proposed Entry on the Vacant Sites Register was issued on the 20th November 2018 to the previous owners of the site. On the 31st December 2018 2017, the Notice of Entry on the Vacant Sites Register was issued to the previous owners. This section 7(3) notice was not appealed to the Board.

2.0 Site Location and Description

- 2.1. The site is on the western side of Kilkenny City. It has an area of c4.2ha. Its eastern boundary is along the rear of houses that front onto Grange Road, which is a main road, opposite the Kilkenny Greyhound Stadium. The northern and southern boundaries are not defined and abut agricultural fields. The western boundary is made up of a mature hedge line. The submission from the planning authority states that housing development began on the site on 13th February 2023.

3.0 Statutory Context

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

- 3.1.1. Section 5(1) of the act says –

1) In this Part, a site is a vacant site if—

(a) in the case of a site consisting of residential land—

i) the site is situated in an area in which there is a need for housing

ii) the site is suitable for the provision of housing, and

iii) the site, or the majority of the site, is -

(I) vacant or idle, or

(II) being used for a purpose that does not consist solely or primarily of the provision of housing or the development of the site for the purpose of such provision.....

3.1.2. Section 6(5) of the act says –

A planning authority, or the Board on appeal, shall determine whether or not a site was suitable for the provision of housing for the purposes of this Part by reference to—

(a) the core strategy

b) whether the site was served by the public infrastructure and facilities (within the meaning of section 48 of the Act of 2000) necessary to enable housing to be provided and serviced, and

(c) whether there was any thing affecting the physical condition of the land comprising the site which might affect the provision of housing

3.1.3. 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. Section 18(3) of the act says –

Where the Board determines that a site was no longer a vacant site on 1 January in the year concerned, or is no longer a vacant site on the date on which the appeal under this section is made, it shall give written notice to the planning authority who shall cancel the entry on the register in respect of that site and shall cancel the demand made in respect of that year

4.0 Zoning

4.1. The **Kilkenny City and County Development Plan 2021-2027** applies. The site is zoned “New Residential”.

5.0 Planning History

- 5.1. **ABP-314345-22** – on 21st December 2022 the board confirmed a demand for payment of the vacant site levy for 2021, following an appeal lodged on 10th August 2022 and a site inspection on 19th October 2022.
- 5.2. **Reg. Ref. 21/384** – the council granted permission for 87 houses on the site after an appeal under ABP-311793-21 was withdrawn in March 2022.
- 5.3. **Reg. Ref. 21/464** – the council granted permission for 60 houses after an appeal under ABP-311770-21 was withdrawn in March 2022.

6.0 Planning Authority Decision

6.1. Register of Vacant Sites Report:

The Demand for Payment for 2022 that is the subject of this appeal was issued on 28th July 2023 seeking a payment of €245,000, that being 7% of the site's value of €3,500,000. It was based on a report from the council's planner dated 7th June 2023 the site was not currently vacant or idle and which referred to commencement notices that were received on 13th February 2023 in relation to the permissions for housing that were granted under Reg. Ref. Nos 21/384 and 21/464.

6.2. Previous Planning Authority Notices

- 6.2.1. A Notice of Proposed Entry on the Vacant Sites Register under section 7(1) was issued to Anthony McCarthy, Brendan McCarthy and Patrick Tyrell on 20th November 2018.
- 6.2.2. A Notice of Entry on the Vacant Sites Register under section 7(3) of the act was issued to Anthony McCarthy, Brendan McCarthy and Patrick Tyrell on 31st December 2018. No appeal was made to the Board in relation to this notice.
- 6.2.3. A Notice of Determination of the Market Value of the site was issued under section 12(4) of the act was issued to Anthony McCarthy, Brendan McCarthy and Patrick Tyrell putting the value at €2,000,000.
- 6.2.4. A further valuation pertaining to the site was issued by Kilkenny County Council on the 26 April 2022. The value of the subject site is stated to be €3,500,000.

- 6.2.5. A Demand for Payment under section 15 of the act was issued to Glenveagh Homes Limited on dated 14 July 2022 seeking payment of the levy for 2021 amounting to €140,000 . This notice was appealed to the board on 10th August 2022 and confirmed by the board on 21st December 2022 after a site inspection on 19th October 2022.
- 6.2.6. A Notice of Determination of the Market Value of the site under section 12(4) of the act was issued on 26th April 2022 to Glenveagh Homes putting the value of the site at €3,500,000.
- 6.2.7. The planning authority cancelled the entry of the site on the Register in June 2023.

7.0 The Appeal

7.1. Grounds of Appeal

- The site is not a vacant site and was not a vacant site when it was placed on the register because it did not have access to Granges Road and the watermain and sewer there. It was effectively landlocked until the owner purchased the adjoining land to the south. That adjoining land was not placed on the register, even though it was zoned, because it was in agricultural use. However the appeal site appears from satellite imagery to have also been in agricultural use. Furthermore the Local Area Plan in force between 2008 and 2018 had a requirement that new infrastructure including a new trunk sewer on the inner relief road would be provided in tandem with the provision of housing on lands that include the appeal site. So the site was not suitable for the provision of housing under section 6(5)(b) of the 2015 act and so was not a vacant site. It should not have been placed on the register and the current demand for payment should be cancelled. Three decisions by the board to cancel other demands for payments are cited as “precedent” – 307450, 310275 and 310433. In the first case board concluded that the site was not a vacant site due to lack of infrastructure, and the second two cases because of the construction that had started on the site.

7.2. Planning Authority Response

- 7.2.1. The planning authority acknowledge that the site is no longer a vacant site as notices of the commencement of construction upon it were received on 13th February 2023. However the appellant's arguments that the site should not have been placed on the register are not accepted. The site was a vacant site prior to the commencement of development upon it as it had access to the public infrastructure and facilities cited in section 6(5) of the act as demonstrated by the fact that permission for housing was granted on the site.

8.0 Assessment

- 8.1. The site was greenfield land immediately adjoining the existing built up area of Kilkenny City and was zoned for new residential development in the 2021 development plan. In these circumstances the arguments put forward in the appeal to support the contention that the site should never have been considered a vacant site suitable for housing under section 5(1)(ii) and 6(6) of the act– due to probable prior agricultural use and purported difficulties in accessing roads, water and drainage infrastructure – are unconvincing. The planning authority were therefore correct to issue the demand for payment of the levy for 2022 based on the vacancy of the site on 1st January of that year. This was also consistent with the decision by the board to confirm the demand for payment on the site for 2021 based on a conclusion that the appellant in the previous appeal had not demonstrated that this piece of zoned land was not suitable for housing. The fact that housing development has since started on the site would make it even harder to support a conclusion that the site was not suitable for housing development.
- 8.2. Nevertheless, while the planning authority’s demand was correctly based on the circumstances of the site on 1st January 2022, section 18(3) requires the board to also consider the vacant status of the site on the date an appeal is made, which in this case was 24th August 2023. The planning authority’s submission make it very clear that the site ceased to be a vacant site when housing development began upon it pursuant to commencement notices submitted to it on 13th February 2023 in relation to the permissions granted under Reg. Ref. Nos. 21/384 and 21/464. The construction activity that was occurring on the site around the 24th August 2023 made meant that, at the time at the time the appeal was made, the site was being used for the development of housing and so was not vacant according to section 5 (iii)(II) of the act made. So the board should cancel the demand for payment for 2022 in accordance with section 18(3) of the act.

9.0 Recommendation

- 9.1. 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 1st of January 2022 but was not a vacant site on 24th August 2023, the

date on which the appeal was made and should therefore cancel the demand for payment of the levy for 2022. .

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, the issuing of the demand for payment for 2022, and the submission on 13th February 2023 of commencement notices for the development of housing on the site permitted under Reg. Ref. Nos. 21/ 384 and 21/464
- (b) The grounds of appeal submitted by the appellant,
- (c) The report of the Planning Inspector,

The board concluded that the site was being used for the development of housing on the date the appeal was made and so was no longer a vacant site according to Part 2) of the Urban Regeneration and Housing Act 2015, as amended.

The demand for payment of the vacant site levy issued by the planning authority in respect of the site for 2022 under section 15 of the Urban Regeneration and Housing Act 2015, as amended, is, therefore, cancelled.

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

Stephen J. O'Sullivan
Planning Inspector

18th February 2024