



An
Bord
Pleanála

Inspector's Report ABP-318807-24

Type of Appeal

Appeal against a Section 18 Demand
for Payment for 2021

Location

Crossneen, Springhill Road,
Graiguecullen, Co. Laois

Planning Authority

Laois County Council.

Planning Authority VSL Reg. Ref.

VS/G/2016/11a 2020

Site Owner

Bruce and Barbara Fennell

Date of Site Visit

24th May 2024

Inspector

Paul O'Brien

1.0 Introduction

This appeal refers to a Section 15 Notice of Demand for Payment of Vacant Site Levy issued by Laois County Council, stating their demand for a vacant site levy for the year 2020 amounting to €10,500 for a vacant site at Crossneen, Springhill Road, Graiguecullen, Co. Laois and which is identified as VS/G/2016/11a 2020. The registered owner of the appeal site is Bruce Fennell and Barbara Fennell of Crossneen, Carlow, Co. Carlow.

Notice of Proposed Entry on the Vacant Sites Register was issued to Bruce Fennell and Barbara Fennell on the 13th of March 2018 and notification of Entry on the Vacant Sites Register was issued on the 10th of June 2019.

A valuation pertaining to the site was issued by Laois County Council on the 5th of August 2021 to Bruce Fennell and Barbara Fennell. The value of the subject site is stated to be €150,000. The Determination of Market Value was appealed to the Valuation Tribunal. A Valuation Tribunal judgement issued on the 9th of March 2023 dismissed the appeal and confirmed the value of the land at €150,000.

A Notice of Demand for Payment of Vacant Site Levy for the year 2020 under Section 15 of the Urban Regeneration and Housing Act was issued to Bruce Fennell and Barbara Fennell on the 1st of December 2023 for the value of €31,500. Bruce Fennell and Barbara Fennell 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 0.17 hectares is located to the south of the Springhill Road and to the east of the access road to Meadows Way in Graiguecullen, Carlow, Co. Laois. The site was undeveloped on the day of the site visit though there were indications that some preparatory construction work had taken place with the site cleared, materials placed on the site and construction markers such as levelling pegs throughout the site. The site was fenced off from access and the subject lands form part of a larger land area, all of which are enclosed in the same manner. The adjoining lands were in residential use.

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 10th of June 2019 entering the site onto the register on that date, and following an appeal to the Valuation Board, a Notice of Demand for Payment of Vacant Site Levy for the year 2020 under Section 15 of the Urban Regeneration and Housing Act was issued to Bruce Fennell and Barbara Fennell on the 1st of December 2023.

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 **Laois County Development Plan 2021 - 2027:** was adopted on the 25th January 2022 and came into effect on the 8th of March 2022.

4.2 Section 4.5 – ‘Implementation of the Urban Regeneration and Housing Act 2015’. The following is noted:

‘The Urban Regeneration and Housing Act 2015 provides for the imposition of a Vacant Site Levy within areas where housing is required and areas in need of renewal. The levy will support the implementation of the Development Plan and Core Strategy objectives, particularly in respect of promoting the renewal and regeneration of urban areas thus ensuring a compact urban form and sustainable growth patterns. The Urban Regeneration and Housing Act set out two broad categories of vacant land that the levy may apply to: • Lands zoned primarily for residential purposes • Lands in need of regeneration Laois County Council has determined that a need for housing exists in the Towns of Portlaoise, Portarlington, Mountmellick and Graiguecullen as indicated in Table 4.1. The Planning Authority may determine that a need for housing exists in additional Laois Towns during the Plan period.’

Under the section ‘Housing Development Policy Objectives’ the following is noted: HPO 5 – ‘To engage in active land management and site activation measures, including the implementation of the vacant site levy on all vacant residential and regeneration lands, and address dereliction and vacancy to ensure the viability of towns and village centres, i.e. Portlaoise, Portarlington, Mountmellick and Graiguecullen.’

Objective CS 09 states: ‘Prepare a cross boundary Joint Local Area Plan (LAP) for Carlow / Graiguecullen and associated local transport plan in conjunction with Carlow County Council having regard to the projected population growth set out in the Core Strategy of this Plan and to its location within the combined functional area of both Laois County Council and Carlow County Council. During the transition period between adoption of this county development plan and the adoption of the

Joint Local Area Plan for Carlow / Graiguecullen, policies and standards in this county development plan shall apply’.

Under Section 2.10.1.2 ‘Graiguecullen’ it is stated: ‘A joint LAP for the Carlow / Graiguecullen area was prepared in 2012 and further extended up to and including 22nd October 2022 after which time a new Joint Spatial Plan will be prepared for the Greater Carlow Graiguecullen Area in conjunction with Carlow County Council which will align with the policy provisions of the EMRA RSES and the Southern Regional Assembly RSES in order to comply with RPO 4.75.’

4.3 Joint Spatial Plan for the Greater Carlow Graiguecullen Urban Area 2012 – 2018

This Plan, which includes the subject site, was extended to be place until the 4th of November 2022. The subject site is zoned ‘Residential 2’ with an objective ‘To provide for new residential development, residential services and community facilities within the Plan period 2012-2018’.

An Issues Paper for the Carlow-Graiguecullen Joint Urban Local Area Plan 2023-2029 was prepared in September 2022 with pre-draft consultation undertaken from 16th September 2022 to the 12th of October 2022. Following this, a Draft Local Area Plan was to be prepared and published in Q1 of 2023 and the Carlow Graiguecullen Local Area Plan adopted thereafter. To date no LAP has been prepared.

5.0 Planning History

Subject site:

ABP Ref. 304720-19 refers to an October 2019 determination that lands including the subject site were vacant in accordance with the meaning of the Urban Regeneration and Housing Act 2015.

PA Ref. 04/890 refers to a January 2005 decision to grant permission for a residential development of 102 residential units, creche, retail facilities and all associated site works on these lands.

PA Ref. 07/939 refers to an October 2007 decision to grant permission for modifications to unit types.

Permission was extended under **PA Ref 09/597** by 2.5 years and further extended on the 10th of July 2012 by five years under **PA Ref. 12/220**.

Residential Zoned Land Tax (RZLT):

ABP Ref. 316943-23 refers to a September 2023 to consider the site to be 'out of scope' for the purposes of the RZLT Map as the lands were no longer zoned.

6.0 Planning Authority Decision

6.1 Register of Vacant Sites Report:

Copies of the Planning Authority Vacant Sites Reports have been provided, and these include photographs of the site over a period of time. The following are provided and are included on file:

- Photographs of the site taken on the 30th of November 2017.
- Photographs of the site taken on the 14th of February 2017.
- Photographs of the site taken on the 29th of November 2016.
- Report dated 20th of December 2017 indicating that site visits were undertaken in February and November 2017, on which dates the site was vacant and undeveloped.

- Report dated 5th November 2018, recommending that the lands be included on the Vacant Site Register.

6.2 Planning Authority Notices:

A Notice of Determination of Market Value was issued to Bruce Fennell and Barbara Fennell on the 5th of August 2021 that the valuation placed on the site is €150,000, as of the 12th of October 2020, and instructions as to make an appeal to the Valuations Tribunal, accompanied by a map with the site outlined.

Three separate Section 15 Demand for Payment Notice of Vacant Site Levy have been issued to Bruce Fennell and Barbara Fennell, but all were issued on the same date – 1st of December 2023.

The site was therefore included on the Vacant Site Register for the years 2020, 2021 and 2022 and these inclusions are the subject of the 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 years 2020, 2021 and 2022 – Inclusion on the register for 2021, 2022 and 2023. The grounds of the appeal can be summarised as follows:

- The demand should be issued separately for each of the three years.
- No details provided as to how the calculation of the land value was arrived at for the specified years.
- No evidence that the Planning Authority carried out a site investigation.
- The site was in agricultural use for the relevant years and photographs demonstrating this have been provided dated 29th November 2019, 27th April 2020, 27th April 2021 and 29th March 2022.
- The land is not zoned for residential use; the LAP has expired.
- Concerns about procedural issues.

7.2 Planning Authority Response

No comment received.

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 2019, 2020 and 2021.

8.3 Is it a Vacant Site?

A Section 7(3) Notice of Entry on the Vacant Sites Register was issued on the 10th of June 2019. 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 continued to be vacant at the time of appeal as it was in agricultural use with photographs submitted demonstrating this.

I note the submitted details, however the ploughing of a field need not necessarily demonstrate that it was in agricultural use. Considering the size area, though combined with lands to the east, this is not a significant landholding for the purposes of tillage farming etc.

Based on the information submitted and the evidence presented by the Planning Authority, I am satisfied that for the year 2020, the site was vacant in accordance with the Act.

8.4 Levy Calculation

A Notice of Determination of Market Value was issued to Bruce Fennell and Barbara Fennell on the 5th of August 2021 with a value of €150,000. This was appealed to the Valuation Tribunal who upheld the valuation issued by the Planning Authority and a levy of €31,500 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 2020. 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, 2020, the Board is satisfied that the site was a vacant site for the year 2020 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.

Paul O'Brien

Inspectorate

1st July 2024