



An  
Bord  
Pleanála

## Inspector's Report ABP-318863-24

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<b>Type of Appeal</b>	Appeal against a Section 18 Demand for Payment.
<b>Location</b>	Site at Hodson Bay, Barrymore, Athlone, Co. Roscommon.
<b>Planning Authority</b>	Roscommon County Council.
<b>Planning Authority VSL Reg. Ref.</b>	VS/HB/18/1.
<b>Site Owner</b>	Sonja and Thomas Connolly.
<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 Roscommon County Council, stating their demand for a vacant site levy for the year 2023 amounting to €14,000 for vacant site at Hodson Bay, Barrymore, Athlone, Co. Roscommon and identified as VS/HB/18/1. The appeal site has stated registered owners as Sonja and Thomas Connolly.

A Notice of Proposed Entry on the Vacant Sites Register was issued on 27<sup>th</sup> March 2018. On the 20<sup>th</sup> June 2018, the Notice of Entry on the Vacant Sites Register was issued. This section 7(3) notice was not appealed to the Board.

A valuation pertaining to the site was issued by Roscommon County Council on 4<sup>th</sup> September 2018. The value of the subject site is stated to be €150,000.

A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued on the 25<sup>th</sup> November 2019 for the value of €10,500.

A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued on the 30<sup>th</sup> November 2020 for the value of €10,500 for 2019 and €10,500 for 2020.

A revaluation pertaining to the site was issued by Roscommon County Council on 15<sup>th</sup> November 2021. The value of the subject site is stated to be €200,000.

An appeal was lodged under ABP 312192-21. ABP notified the appellants that as a Section 15 Notice was not issued to the landowners following the revaluation of the site there was not provision to appeal.

A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued on the 15<sup>th</sup> November 2022 for the value of €14,000 for the year 2022. An appeal was lodged under ABP315236-23, the Board determined on the 7<sup>th</sup> February 2024 that the site was not vacant and directed the Council to remove the site from the Vacant Sites Register and cancel the demand for payment for the year 2022.

A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued on the 11<sup>th</sup> December 2023 for the value of €14,000.

The appellants (Sonja and Thomas Connolly) appealed the Demand for Payment Notice issued pursuant to Section 15 of the Urban Regeneration and Housing Act under which forms the current appeal before the Board.

## **2.0 Site Location and Description**

The site with a stated area of c.1.3ha is located on the northern side of a local road access off the N61 at Barrymore which also serves as an access to the Hodson Bay Hotel and Athlone Golf Club. The site is located c.4.6km from Athlone town in county Roscommon.

## **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 planning authority 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. A section 7(3) Notice was issued 16<sup>th</sup> April 2019 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 the Roscommon County Development Plan 2022-2028 which came into effect on the 19<sup>th</sup> April 2022.

The site is located within the identified settlement boundary of the Hodson Bay/Barrymore Area Plan contained in Volume II Section 4.1 of the Roscommon County Development Plan 2022-2028. Map HB1 Hodson Bay includes land zoned 'leisure Tourism/Amenity' and 'Green Belt'. No other land uses are identified.

Section 4.1 states 'The Hodson Bay/Barrymore area, whilst not specifically a town or village, warrants the preparation of an Area Plan, owing to the nature of development that has occurred in this area over recent years'

Section 4.7 refers to Urban Regeneration and the Vacant Site Levy which states 'The vacant site levy may be applied to lands within the urban settlement which are identified as being in need of renewal and/or regeneration or are residentially zoned.'

## **5.0 Planning History**

**ABP 315236-22** Appeal refers to a Section 15 Notice of Demand for Payment of Vacant Site Levy Demand for Payment. The Board decided on 7<sup>th</sup> February 2024 in accordance with section 18(3) of the Urban Regeneration and Housing Act 2015, as amended that the site was no longer vacant and that it was appropriate that a notice be issued to the planning authority to cancel the entry on the Vacant Site Register and cancel the demand for Payment.

I note that the current appeal before the Board was lodged on the 16<sup>th</sup> of January 2024 on foot of a Section 15 Notice of Demand for Payment for the year 2023 issued by Roscommon County Council on the 11<sup>th</sup> December 2023 which predated the Board's decision under ABP 315236-22.

**PA Ref. 23/298** refers to a March 2024 grant of permission to construct a detached dwelling house and garage on site no. 5 (Phase 2). (Note: development access entrance/exit onto the public road, ancillary landscaping and footpaths along with connection to public services and sewers including all associated site development works previously granted under PD/21/233).

**PA Ref. 21/233** refers to a 2021 grant of permission to: (a) construct a development access road incorporating entrance / exit onto the public road, ancillary landscaping, and footpaths along with connection to public services and sewers including associated site development works and (b) construct 4 No. detached dwelling houses and garage. Was the subject of a leave to appeal request under ABP 310951-21 which was refused in August 2021.

**PA Ref. 21/176** refers to an incomplete application for permission to a) construct development access road incorporating an entrance/exit onto the public road, ancillary landscaping and footpaths along with connection to public services and sewers including all associated site development works and b) construct 4 no. detached dwelling houses and garages.

**PA Re. 19/141** refers to an incomplete application for permission to a) construct development access entrance/exit onto the public road, ancillary landscaping and footpaths along with connection to public services and sewers including all associated site development works and b) construct 4 no. detached dwelling houses and garages.

**PA Ref. 19/187** refers to an application that was withdrawn for permission to a) Construct development access entrance /exit onto the public road, ancillary landscaping and footpaths along with connection to public services and sewers including all associated site development works and b) construct 4 no. detached dwelling houses and garages

**PA Ref. 19/186** refers to an application that was withdrawn for permission to construct a dwelling house and garage together with ancillary site work.

**PA Ref. 19/654** refers to a 2020 decision to refuse permission to a) construct a development access road incorporating entrance/exit onto the public road, ancillary landscaping and footpaths along with connection to public services and sewers including all associated site development works and b) Construct 5 no. detached dwelling houses and garages and ancillary works, external stores and services together with associated site works. Not appealed.

## **6.0 Planning Authority Decision**

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

A Vacant Site Assessment Report (11/05/2018) was prepared for the site. The following key points are noted:

Site visits were undertaken in September 2016 and September 2017.

The planning authority stated that the site was vacant for in excess of 12 months.

The report refers to an attached w.r.t Housing Need (no copy on file).

The report recommendation refers to “should be included for assessment on the Vacant Site Register”. There is no reference in the report to either section 5(1)(a) or 5(1)(b) of the 2015 Act and what criteria was used to assess the site. The assessment refers to ‘Existing residential’ zoning.

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

A Notice of Proposed Entry on the Vacant Sites Register was issued on 27<sup>th</sup> March 2018. On the 20<sup>th</sup> June 2018, the Notice of Entry on the Vacant Sites Register was issued. This section 7(3) notice was not appealed to the Board.

A valuation pertaining to the site was issued by Roscommon County Council on 4<sup>th</sup> September 2018. The value of the subject site is stated to be €150,000.

A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued on the 25<sup>th</sup> November 2019 for the value of €10,500.

A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued on the 30<sup>th</sup> November 2020 for the value of €10,500 for 2019 and €10,500 for 2020.

A revaluation pertaining to the site was issued by Roscommon County Council on 15<sup>th</sup> November 2021. The value of the subject site is stated to be €200,000.

An appeal was lodged under ABP 312192-21. ABP notified the appellants that as a Section 15 Notice was not issued to the landowners following the revaluation of the site there was not provision to appeal.

A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued on the 15<sup>th</sup> November 2022 for the value of €14,000.

A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued on the 11<sup>th</sup> December 2023 for the value of €14,000.

## **7.0 The Appeal**

### **7.1 Grounds of Appeal**

The landowners have submitted an appeal to the Board, against the decision of Roscommon 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 site is not vacant, the appellants have been actively trying to develop the site since 2018 through the planning process. Planning history of withdrawn and refused applications. Extant permission for 4 houses on the lands. Land identified as 'site no. 5 excluded due to the presence of Japanese knotweed.
- Query the valuation process which is considered flawed as has no regard to the issues raised by RCC associated with developing the site for residential purposes.
- Attempted to make an appeal under ABP 312192-21) but were informed that as no section 15 notices was issued there was no recourse to appeal.
- Delays developing the site due to Covid-19.
- The site is not a vacant site for reason set out which include inter alia that the site is not situated in an area where there is a need for housing, the site is in a

rural setting not suitable for large residential development, presence of Japanese knotweed etc

- Presence of Japanese knotweed on site.
- Attempted to lodge appeal before but no section 15 notice in place at the time.
- Currently awaiting decision on appeal under VX20.315236.

## **7.2 Planning Authority Response**

Correspondence dated 6<sup>th</sup> February 2024 includes copies of planning history and VS history.

- Refer to Vacant Site Levy for 2022 and appeal under ABP 315236-22
- Photographs related to site visit dated 9<sup>th</sup> December 2023
- Copies of notices included.

## **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.

### **8.2 The site is no longer vacant**

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 2023.

The current appeal was lodged on the 16<sup>th</sup> January 2024, relating to a Demand for Payment Notice that issued on the 11<sup>th</sup> December 2023, before a decision issued



under ABP 315236-22. Under ABP 315236-22 the Board determined per Order dated 7<sup>th</sup> February 2024 that the site was no longer a vacant site within the meaning of the Act and considered it appropriate that a notice be issued to the planning authority to cancel the entry on the Vacant Sites Register and cancel the demand for payment.

### **8.3 Procedural Matter**

The grounds of appeal have set out that the appellants wish to appeal not only the Demand for payment Notice dated 15<sup>th</sup> November 2022 but also Notices dated 13<sup>th</sup> October 2021, 25<sup>th</sup> November 2021, 30<sup>th</sup> November 2020 and 17<sup>th</sup> November 2021.

The current appeal relates to the levy year 2023 and I have not considered any matter that concern the levy charge for preceding years, because the time for making an appeal has passed. As set out previously the Board determined under ABP 315236-22 that the site was no longer vacant and notice for demand for payment be cancelled, this related to the demand for 2022. It does not mean that the levy charged for preceding years are also cancelled and should be pursued by the planning authority using the courts as allowed for by the 2015 Act.

### **8.5 Levy Calculation**

As set out previously in my report payment for VSL due for the preceding years (with the exception of 2022) remain outstanding but are considered beyond the scope of this report.

A Notice of Demand for Payment of 2022 Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to 11<sup>th</sup> December 2023 on the for the value of €14,000.

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. The appellant has not queried the calculation of the levy and it is clear that the simple calculation of the levy demanded is correct. However, for reasons set out previously in my report I am of the view that the charge demanded cannot be confirmed and should be set at zero for the year concerned, i.e. 2023.

## 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 cancel the Notice of Demand for Payment of Vacant Site Levy as the site was no longer a vacant site as defined by the 2015 Act, on the 16<sup>th</sup> January 2024, the date on which the appeal was made. The demand for payment of the vacant site levy under Section 15 of the Urban Regeneration and Housing Act 2015 is, therefore, cancelled. In accordance with Section 18 (4) of the Urban Regeneration and Housing Act 2015 (as amended), the Board should correct the amount of levy demand to nought, as the circumstances under which to define the lands as a Vacant Site and levy the charge had altered. Furthermore the Board directed the planning authority to remove the site from the Vacant Site Register under ABP315236-22 and its decision that issued on the 7<sup>th</sup> February 2024.

## 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 determination of the Board under ABP 315236-22 that the site was no longer a vacant site.

and thus the Board could not be satisfied that the area of land continued to be a Vacant Site as defined by section 5(1)(a) of the Urban Regeneration and Housing Act 2015 (as amended) on the 16<sup>th</sup> of January 2024, the date on which the appeal was made. And further the Board's Direction under ABP 315236-22 for the site to be removed from the Vacant Site Register. The Board considers that it is appropriate that a notice be issued to the planning authority to reinstate the cancellation of the entry on the Vacant Site Register and cancel the demand for payment.

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

31<sup>st</sup> May 2024