



An
Bord
Pleanála

Inspector's Report ABP-319163-24

Type of Appeal	Appeal against a Section 15 Demand for Payment of Vacant Site Levy for the year 2023.
Location	Land measuring 0.6 ha at Castle Street (former Heiton Buckley site), Bray, Co. Wicklow.
Planning Authority	Wicklow County Council.
Planning Authority VSL Reg. Ref.	VS/B/04.
Site Owner	Silverbow SPV Limited.
Planning Authority Decision	Charge Levy.
Date of Site Visit	27 January 2025.
Inspector	Stephen Rhys Thomas.

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1.0 Introduction

- 1.1. This appeal refers to a Section 15 Notice of Demand for Payment of Vacant Site Levy issued by Wicklow County Council, stating their demand for a vacant site levy for the year 2023 amounting to €189,000 for a vacant site at Castle Street (former Heiton Buckley site), Bray, Co. Wicklow, and identified as VS/B/04. The notice was issued to Silverbow Limited and dated 13th February 2024. The owner Silverbow SPV Limited has appealed the Demand for Payment Notice issued pursuant to Section 15 of the Urban Regeneration and Housing Act.
- 1.2. A valuation pertaining to the site was issued by Wicklow County Council on the 28th August 2018. The value of the subject site is stated to be €3,500,000 and this was corrected on appeal to €2,700,000.
- 1.3. A Notice of Proposed Entry on the Vacant Sites Register was issued to Beralt Developments Limited on the 20th June 2017. On the 1st December 2017, the Notice of Entry on the Vacant Sites Register was issued to Beralt Developments Limited. This section 7(3) notice was appealed to the Board.

2.0 Site Location and Description

- 2.1. The site comprises a series of warehouse structures both within and addressing the street. The site also adjoins a cul-de-sac at Dwyer Park. The site is bounded by a high palisade fence and high concrete block walls. The site is adjoined by a range of buildings and uses from commercial to residential uses. The condition of the site is characterised by neglected buildings in varying states of disrepair. At present, the site is in use for the storage of building materials for used in various public realm improvements in Bray town centre, specifically adjacent to Bray Dart Station.

3.0 Statutory Context

- 3.1. **Urban Regeneration and Housing Act 2015 (as amended).**
 - 3.1.1. The site was entered onto the register subsequent to a Notice issued under Section 7(1) of the Act that stated the planning authority (PA) was of the opinion that the site referenced was a vacant site within the meaning of Section 5(1)(b) of the Act. A

section 7(3) Notice was issued 1st December 2018 and the site was subsequently entered onto the register on that date.

- 3.1.2. 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.

3.2. Development Plan Policy

3.2.1. Wicklow County Development Plan 2022-2028

- 3.2.2. The current County Development Plan refers to Placemaking for Town and Village Centres in Chapter 5 of the Plan and with reference to Regeneration and Renewal specifically at Policy CPO 5.13 where it states:

In many settlements in the County, there are sites and areas in need of development and renewal, in order to prevent:

- a. adverse effects on existing amenities in such areas, in particular as a result of the ruinous or neglected condition of any land,
- b. urban blight and decay,
- c. anti-social behaviour, or
- d. a shortage of habitable houses or of land suitable for residential use or a mixture of residential and other uses

It is an objective of this plan to encourage and facilitate the appropriate development of such sites / lands and all available tools and mechanisms, including the Vacant Site levy, may be utilised to stimulate such development.

In this regard, plans for towns in Levels 4 and 5 of the settlement hierarchy include a map showing the area within the town where it is deemed that renewal and

regeneration is required and these areas will be examined in detail to determine if there are sites where the Vacant Site Levy should be applied.

In addition, the following zones in larger towns (with stand alone plans) may include sites that are in need of renewal and regeneration, and these areas will be examined in detail to determine if there are sites where the Vacant Site Levy should be applied.

Bray & Environs - Town Centre (TC), Neighbourhood Centre (NC), Seafront Zone (SF), Gateway & Transport Hub (GTH), Mixed Use (MU)

CPO 6.35

In many settlements in the County, there are sites and areas in need of development and renewal, in order to prevent:

- a. adverse effects on existing amenities in such areas, in particular as a result of the ruinous or neglected condition of any land,
- b. urban blight and decay,
- c. anti-social behaviour, or
- d. a shortage of habitable houses or of land suitable for residential use or a mixture of residential and other uses

It is an objective of this plan to encourage and facilitate the appropriate development of such sites / lands and all available tools and mechanisms, including the Vacant Site Levy, may be utilised to stimulate such development.

All lands zoned for residential development in this plan (this refers to Level 4 and 5 settlements), including all lands zoned: - Existing Residential (RE), - New Residential (RN), and - Town Centre, outside of the designated 'regeneration zone' as defined in each plan, are deemed to be lands that may be in need of new development in order to ensure there is no shortage of housing, and these zones will be examined in detail in order to determine if there are sites where the Vacant Site Levy should be applied.

In addition, the following residential zones in larger towns, are deemed to be lands that may be in need of new development in order to ensure there is no shortage of housing, and these zones will be examined in detail in order to determine if there are sites where the Vacant Site Levy should be applied.

Bray and Environs - RE, R-HD, R20, R15, R10, R, MU (where the predominate use provided for is residential)

3.2.3. The site is zoned TC – Town Centre in the Bray Municipal District Local Area Plan 2018–2024, which is currently under review. However, for the period of the levy, the site was zoned TC – Town Centre in the operative lifetime of the Bray Municipal District Local Area Plan 2018–2024. The site is therefore considered as a regeneration site under section 10(2)(h) of the PDA 2000 Act, the development and renewal of areas, identified having regard to the core strategy, that are in need of regeneration, in order to prevent—

(i) adverse effects on existing amenities in such areas, in particular as a result of the ruinous or neglected condition of any land,

(ii) urban blight and decay,

(iii) anti-social behaviour, or

(iv) a shortage of habitable houses or of land suitable for residential use or a mixture of residential and other uses;]

3.2.4. Policy CPO 5.13 of the current county development plan and policy HD19 of the previous county development complies with the requirements of the 2015 Act.

4.0 Planning History

4.1. Subject site

ABP-313442-22 – Demolition of existing buildings, construction of 139 apartments, creche and associated site works. No decision to date.

Ref. 14/2147 (PL27.245361) – permission refused by Wicklow County Council and An Bord Pleanála on appeal for a single storey discount foodstore principally for the under-utilisation of an opportunity site.

4.2. VSL History:

ABP-310475-21 - Vacant Site Levy - Appeal S.18 - Demand Confirmed 1st April 2022.

ABP-300550-18 - Vacant Site Levy - Appeal S.9 - Notice Confirmed 6th June 2018.

4.3. In the vicinity of the site

ABP-317742-23 - BusConnects Bray to City Centre Core Bus Corridor Scheme – No decision to date.

5.0 Planning Authority Decision

5.1. Planning Authority Reports

5.1.1. Planning Reports

- Report dated 08/02/24 – condition of site remains as of previous site visit in January 2023, no active use for buildings or yard. The condition of the buildings are neglected and impact the character of the area. Fire damage is present and a lack of maintenance is noted. Litter, graffiti and dumping take place on site. Issue demand notice for 2023.
- Site photographs dated January 2024 are on file.

5.2. Planning Authority Notice

- 5.2.1. Wicklow County Council advised the site owner (Silverbow Limited) by notice issued under section 15 of the 2015 Act that the subject site (Planning Authority site ref. VS/B/04) is now liable for a payment of the levy for 2023 of €189,000 Payment terms and methods are outlined, dated 13th February 2024.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The landowner has submitted an appeal to the Board and can be summarised as follows:
- The overall lands have been continually charged rates and have recently been licensed to a civil engineering company. Under a licence dated 13th December 2023, the entire site was licensed to David Walsh Civil Engineering Limited for a period of twelve months commencing 1st January 2024. The licence states a weekly sum of €700 to be paid for the use of the lands as a

storage yard. Together with instructions to keep the yard in good order, tidy and neat.

The appeal is accompanied by the aforementioned licence and rates notifications.

6.2. Planning Authority Response

- None.

7.0 Assessment

7.1. Introduction

- 7.1.1. 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.

7.2. The site is no longer vacant

- 7.2.1. 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 (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 January in the year concerned, in this case 2023.
- 7.2.2. For the purposes of this assessment, I will consider both scenarios.

7.3. Is it a Vacant Site?

- 7.3.1. A Section 7(3) Notice of Entry on the Vacant Sites Register was issued on the 1st December 2017. Subsequently a Section 9 appeal was made to the Board under appeal reference ABP-300550-18. A detailed assessment as to whether the site constituted a vacant site was carried out by the Reporting Inspector. It was determined by the Board that given the information submitted, the grounds of appeal and the report of the Inspector, that the notice be confirmed and the site could be placed on the register. The appellant has not queried the processes and procedures by which the site was initially placed on the register and no further issues are raised with the site and its status with respect to the Vacant Site Register in previous years.
- 7.3.2. I am satisfied that no new information has come to the fore since the Section 7(3) Notice was issued and that the matter of vacancy and placement on the register has already been adjudicated on and should not be re-examined. The implementation of

the Vacant Site Levy, the use of Policy HD19 of the Wicklow County Development Plan 2016-2022 (in force at the time) has been found acceptable in other appeals made to the Board up to now, I do not intend to revisit the decision to place the site on the register in this instance.

The site is no longer vacant as of the 1st of January 2023

- 7.3.3. The owner has submitted a licence agreement dated 18th December 2023, that sets out the conditions and requirements for a licensee, in this case an engineering company, to comply with. The licensee in this instance is David Walsh Civil Engineering Limited and the lands will be used as a storage yard for the period of a year for the sum of €700 per week. The yard and buildings are to remain in good condition, sustain no damage and the yards to be kept neat and tidy. The licence agreement was set to commence on the 1st January 2024. It is reassuring to see that an entity has been attracted to use the site and an agreement reached between the owner and licensee. However, according to the report prepared by the planning authority, and their site photographs dated 11th January 2024, I can see that the condition of the site has not changed since first placed on the register. According to the planning report the buildings are still in a poor and neglected state and there are accumulations of litter on the site.
- 7.3.4. On the day of my site visit I observed that the yard space of the site is in use for the storage of building materials. The materials stored at this location are being used for public realm improvements in Bray town centre, specifically at Bray Dart Station. This has been the case for most of 2024 and will continue to be the case until the middle of this year according to an official on the site. This information poses an issue of timing. The appeal was lodged on the 23rd February 2024 and there was no information on the file that referred to the use of the site, other than a licence agreement concerning Walsh Engineering.
- 7.3.5. There are two main parts to a section 18 appeal with respect to a vacant site and its retention on the register. Firstly, that the burden on showing the site is not a vacant site is on the owner of the site, section 18(2)(a) as follows:

On an appeal under this section the burden of showing that—

(a) the site was no longer a vacant site on 1 January in the year concerned,...

is on the owner of the site.

7.3.6. In this instance, I have not seen any information on the file that would lead me to conclude that on the 1st January 2023 anything had changed in relation to the site to avoid a demand for payment and the site would stay on the register. Putting the issue of a licence agreement to one side, there was no actual use for the site, that comes later at some point in 2024. Some amount of storage use took place during 2024 and continues to take place, but the Act under section 18 does not ask this to be taken into account.

7.3.7. The other part of a section 18 appeal, is the role of the Board and this is outlined by section 18(3) as follows:

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.

7.3.8. Dispensing with the first element, that of the 1st January in the year concerned (in this case 2023), as above, I do not consider that matters changed for the site to avoid the levy and remove the site from the register. The second part of section 18(3) refers to the date on which the appeal was made, and this has some relevance. In my view it allows the Board to consider matters that pertain to the site up until the day the appeal was made and in this case that would be the 23rd February 2024. However, it is evident from the information on file that no actual use pertained to the site at this time and it is only at some point during 2024 that the site became useful with the storage of public realm materials. This use continues to occur on site as I observed on the day of my visit, and this may be a matter for the owner to take up with the planning authority for the year 2024 under section 10 of the 2015 Act.

7.3.9. In my view the condition of the site still represented an adverse impact on the character of the area for the period concerned. No actual use has been advanced for the site during that time and it seems that the licensee did not take up residence and utilise the site for the purpose agreed to until after the appeal was lodged with the Board, the criteria under section 6(6) of the 2015 Act, still apply, the site is still a

vacant site. Based upon the lack of any evidence to show that the site was in active use during 2023 or at the time the appeal was made (23rd February 2024), I am satisfied that for the period concerned, 2023, the site remained a vacant site for the purposes of the 2015 Act and enables a charge to be levied.

7.4. Levy Calculation

- 7.4.1. A Notice of Determination of Market Value was issued to Beralt Developments Limited on the 28th August 2018 stating that the valuation placed on the site is €3,500,000. An appeal was made to the Valuation Tribunal and consequently a Notice under Section 13(6) of the 2015 Act was issued to Beralt Developments Limited, the market value was amended from €3,500,000 to €2,700,000, dated 10th June 2019.
- 7.4.2. In the case of this appeal, a Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to Silverbow Limited on the 13th February 2024 for the value of €189,000.
- 7.4.3. 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.

8.0 Recommendation

- 8.1. 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 2023 and was a vacant site on 23rd February 2024, 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.

9.0 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 levy calculation and charge,
- (b) The grounds of appeal submitted by the appellant,
- (c) The report of the Planning Inspector,
- (d) The lack of information to show that the site was no longer a vacate site within the meaning of the Urban Regeneration and Housing Act 2015, as amended, on the 1st January 2023, or that the amount of the levy has been incorrectly calculated in respect of the site by the planning authority, and the site continued to be a vacant site on the day that the appeal was made.

The demand for payment of the vacant site levy as calculated by the planning authority under section 15 of the Urban Regeneration and Housing Act 2015, as amended, 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.

Stephen Rhys Thomas
Senior Planning Inspector

29 January 2025