



An
Bord
Pleanála

Inspector's Report ABP-319280-24

Type of Appeal

Appeal against a Section 15 Demand for Payment.

Location

Demand Levy - Lands measuring 0.52 ha, West of Main Street Kilcoole, Co Wicklow.

Planning Authority

Wicklow County Council

Planning Authority VSL Reg. Ref.

VS/K/03B

Site Owner

Brookhampton Ltd.

Planning Authority Decision

Demand Payment.

Date of Site Visit

20 February 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 €15,400 for a site west of Main Street, Kilcoole, County Wicklow, and identified as VS/K/03B.
- 1.2. A Notice of Proposed Entry on the Vacant Sites Register was issued to Laurence Keegan on the 26th January 2018. On the 4th July 2018, the Notice of Entry on the Vacant Sites Register was issued to Laurence Keegan, this was not appealed.
- 1.3. A valuation pertaining to the site was issued by Wicklow County Council on the 18th December 2019. The value of the subject site was stated to be €270,000. This notice was subsequently appealed to the Valuation Tribunal, the determination of market value reduced to €220,000, dated 14th October 2021.

2.0 Site Location and Description

- 2.1. This site comprises a rectangular shaped area of ground, that fronts onto Main Street in Kilcoole. The northern boundary of the site is made up with the rear garden walls of houses in the Ashlawn Estate. The southern boundary comprises an overgrown earth bank and hedgerow that aligns with a narrow laneway that provides access to agricultural land. The western end of the site merges with a larger agricultural field. The site interior is overgrown and slopes gently downwards from north to south. Ruinous structures are located at the south eastern corner of the site close to the junction of Main Street and Sea Road.

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 PA was of the opinion that the site referenced was a vacant site within the meaning of Section 5(1)(b) and 6(6) of the Act. The 7(1) Notice was issued 26th January 2018. The site was subsequently entered onto the register 4th July 2018.

- 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.

4.0 Development Plan Policy

4.1.1. Wicklow County Development Plan 2022-2028

Proposed Variations No. 2 and 3 of the Wicklow County Development Plan are noted and are currently ongoing. These variations propose to include within Volume 2 of the CDP “the land use zoning and key development objectives maps for the Local Area Plan settlements / areas of Bray Municipal District, Wicklow Town - Rathnew, Greystones – Delgany & Kilcoole, Arklow and Blessington which have separate Local Area Plans.”

4.1.2. Variations are worded and relate to the following:

Section 1.2 Structure of the Plan

Volume 2 contains

(a) a set of ‘town plans’ for the following settlements: Ashford, Aughrim, Avoca, Baltinglass, Carnew, Donard, Dunlavin, Laragh-Glendalough, Newcastle, Newtownmountkennedy, Rathdrum, Roundwood, Shillelagh and Tinahely.

(b) the land use zoning and key development objectives maps for the Local Area Plan settlements / areas of Bray Municipal District, Wicklow Town - Rathnew, Greystones – Delgany & Kilcoole, Arklow and Blessington which have separate Local Area Plans. Section 3.5 Zoning

This development plan provides the population and housing targets for all 21 settlements in the County up to 2031. However, it only provides plans for 13 settlements, the remainder of the settlements having their own stand-alone ‘Local

Area Plans', which will be reviewed after the adoption during the lifetime of this County Development Plan. As part of the LAP adoption process, the land use zoning and key development objectives maps for the LAP settlements / areas are integrated into Volume 2 of this County Development Plan by way of variation."

A Chief Executive's Report on Submissions received to Variation No. 2, dated January 2025, is currently being considered.

- 4.1.3. The Wicklow County Development Plan 2022-2028 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.

Greystones - Delgany & Kilcoole - Town Centre (TC), Village Centre (VC), Small Local Centre (SLC)

Section 1.2 Structure of the Plan

Separate Local Area Plans are in place, which will be reviewed after the adoption of this plan, for the following towns / areas: Bray Municipal District, Wicklow Town - Rathnew, Arklow, Greystones – Delgany - Kilcoole and Blessington. These Local Area Plans are reviewed and made under Sections 18, 19 and 20 of the Planning and Development Act, and as such do not form part of the CDP. However, the CDP does provide the key parameters for these Local Area Plans such as the future population and housing targets and sets out the broad strategy for the future economic and social development of these towns.

4.1.4. Greystones-Delgany and Kilcoole Local Area Plan 2013-2019

The site is zoned TC – Town Centre in the Greystones-Delgany and Kilcoole Local Area Plan 2013-2019 with an objective ‘To protect, provide for, and improve the development of a mix of town centre uses including retail, commercial, office and civic use, and to provide for ‘Living Over the Shop’ residential accommodation, or other ancillary residential accommodation. To consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and promote urban design concepts and linkages between town centre activity areas.’

The Pre Draft Public Consultation Stage of the Greystones – Delgany – Kilcoole LAP closed on Wednesday 31st January 2024.

5.0 Planning History

5.1. Subject site

Planning Authority Reg. Ref. 2215 and ABP-314721-22 – Permission refused for 56 houses, internal roads, car parking, pedestrian and cycle paths, public open spaces and vehicular entrance from Main Street. Two reasons, density and traffic. 9th February 2024.

ABP-**302552**-18 – Permission refused for 267 no. residential units (225 no. houses, 42 no. apartments), 5 no. retail units, 4 no. office units, childcare facility, innovation hub and associated site works. Three reasons include: wastewater constraints, AA and zoning conflict. 13th December 2018.

5.2. VSL History

ABP-312140-21 – Demand for payment confirmed.

5.3. Residential Zoned Land Tax (RZLT) History (site and vicinity)

ABP-316352-23 – The lands identified are not zoned. Order signed 10th November 2023.

ABP-320630-24 - The lands identified as Parcel ID 313498 are not zoned as they are not indicated on the Wicklow County Development Plan 2022 – 2028, and there is no Local Area Plan in place for the zoning of these lands. Order signed 18th September 2024.

6.0 Planning Authority Decision

6.1. Planning Authority Reports

- 6.1.1. Register of Vacant Sites Report (first report – 25th January 2018) – The site is vacant, ruinous / neglected appearance and signs of antisocial behaviour taking place.
- 6.1.2. Register of Vacant Sites Report (second report – 28th June 2018) – Site visits, 13/06/18, 21/06/18 and 24/06/18. The submission from the owner is noted. For the purposes of the register, the larger site is broken into three, that is A, B and C. The site remains vacant, ruinous and neglected appearance and signs of antisocial behaviour taking place.
- 6.1.3. Section 15 Report – (13th January 2020), site visit 10th January 2020, the site remains vacant, ruinous and neglected structures on site, appearance and signs of antisocial behaviour taking place (dumping). Charge levy, await outcome of Valuation Tribunal appeal.
- 6.1.4. Section 15 Report for 2023 demand, not on file. However, I note that the concurrent appeal (ABP-319276-24) includes a report with regard to both sites (A and B), as follows: Section 15 Report – (13th February 2024), the site remains vacant, unauthorised structures on site, neglected appearance and signs of antisocial behaviour taking place. Charge levy.

6.2. Planning Authority Notices

- 6.2.1. Wicklow County Council advised the site owner that the subject site (Planning Authority site ref. VS/K/03B) is now liable for a payment of 7% of its valuation. The site is valued at €220,000 and hence the levy for 2023 is €15,400. Payment terms and methods are outlined. Notice dated 15th February 2024.

Valuation Tribunal determination of market value - €220,000, dated 14th October 2021.

- 6.2.2. A Section 12(4) Notice issued on the 18th December 2019, advising the owner of the site valuation (€270,000) and instructions to make an appeal to the Valuations Tribunal, accompanied by a map with the site outlined.
- 6.2.3. A section 7(3) Notice issued on the 4th July 2018, advising the owner that their site had been placed on the register.
- 6.2.4. A section 7(1) Notice issued on the 26th January 2018, advising the owner that their site had been identified as a vacant site and invited submissions, accompanied by a site map.

7.0 The Appeal

7.1. Grounds of Appeal

- 7.1.1. The landowner has submitted an appeal to the Board, against the decision of Wicklow County Council to retain the subject site on the Register and demand the levy. The grounds of the appeal can be summarised as follows:

- The lands are not zoned. Reference is made to ABP-316352-23 (RZLT) in which the Board Order states that the lands are not zoned as they are not indicated on the Wicklow County Development Plan 2022 – 2028, and there is no Local Area Plan in place for the zoning of these lands. Town Centre (TC) lands are included in CPO 5.6, in terms of regeneration lands, but as the lands are not zoned, a charge cannot be applied, because the site is not a regeneration site under the terms of the 2015 Act.
- The site should therefore be removed from the VSR and no charge applied.

7.2. Planning Authority Response

- 7.2.1. The Board's attention is drawn to the decision regarding ABP-312140-21.

- 7.2.2. Regarding LAPs, the Greystones-Delgany and Kilcoole LAP 2013 has a 6 year lifespan dated from 29 September 2013. This plan has not been revoked under section 19(1)(c) of the 2000 Act. It is the view of the planning authority that a plan remains in force even after the specified time period or such time period extended under section 19(4)(d) of the 2000 Act. This view was provided by Senior Counsel.
- 7.2.3. The Greystones-Delgany and Kilcoole LAP, will soon be reviewed, work on this matter has begun.

8.0 Assessment

8.1. Introduction

- 8.1.1. The Board should note that a concurrent appeal on a nearby site under the same ownership has been lodged, ABP-319276-24 refers.
- 8.1.2. This appeal 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

- 8.2.1. 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)(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 2020.
- 8.2.2. For the purposes of this assessment, I will consider both scenarios.

8.3. Is it a Vacant Site?

- 8.3.1. The appellant has raised the issue of land use zoning. In their view, because the Greystones-Delgany and Kilcoole LAP 2013 has expired and has not been expressly referred to in the current County Development Plan, the appeal site is not zoned land and cannot be subject to the levy. The appellant points to a recent Board decision on the appeal site concerning the Residential Zoned Land Tax (RZLT) that states the lands are not zoned, ABP-316352-23 refers. The appellant concludes that the site should be removed from the Vacant Site Register (VSR) and no levy charged. The planning authority disagree and refer to an earlier Demand for Payment appeal, where land use zoning was not an issue, and the charge was confirmed. In addition,

the planning authority point out that their legal advice is that the lands remain zoned because the 2000 Act does not include provisions to the contrary.

- 8.3.2. Firstly, section 5(1)(b) of the Urban Regeneration and Housing Act 2015 (the 2015 Act) sets out the criteria for a vacant site consisting of 'Regeneration' land. Only consideration of the criteria that is applicable to regeneration sites, that is section 5(1)(b) and section 6(6) can apply. The 2015 Act includes definitions under section 3, of relevance include:

“regeneration land” means land identified by a planning authority in its development plan or local area plan, after the coming into operation of section 28, in accordance with section 10(2)(h) of the Act of 2000 with the objective of development and renewal of areas in need of regeneration, and includes any structures on such land;

“residential land” means land included by a planning authority in its development plan or local area plan in accordance with section 10(2)(a) of the Act of 2000 with the objective of zoning for use solely or primarily for residential purposes, and includes any structures on such land;

- 8.3.3. Given, the aforesaid definitions, my understanding is that only lands that are identified as regeneration lands or zoned for a particular use can be considered for inclusion on the VSR. The land identified for regeneration and land use zonings must be detailed in the development plan or local area plan. The appellant does not call into question previous notices and so I shall restrict myself to the appeal on hand and the year it refers to. In this instance the year concerned is 2023 and the date at which the appeal was made 13th March 2024.

- 8.3.4. Firstly, the Board should be aware of a Board Order related to a Residential Zoned Land Tax (RZLT) appeal, ABP-316352-23 refers. The Order states that the lands are not zoned as they are not indicated on the Wicklow County Development Plan 2022 – 2028, and there is no Local Area Plan in place for the zoning of these lands. The Order was signed 10th November 2023. The appellant leans entirely on this precedent with reference to the appeal on hand. The planning authority take the opposite view and dismiss the notion that an LAP can cease to have effect because the Planning and Development Act 2000 as amended, has no provision for such a case.

8.3.5. Local Area Plans are governed by Chapter II of the 2000 Act, section 20(4A) states that a local area plan made under this section shall have effect 6 weeks from the day that it is made. There is provision for the planning to revoke a plan, but this has not been availed of. Crucially, section 18(4) states:

(a) A local area plan prepared under this section shall indicate the period for which the plan is to remain in force.

(b) A local area plan may remain in force in accordance with paragraph (a) notwithstanding the variation of a development plan or the making of a new development plan affecting the area to which the local area plan relates except that, where any provision of a local area plan conflicts with the provisions of the development plan as varied or the new development plan, the provision of the local area plan shall cease to have any effect.

8.3.6. Additionally, section 20(2B) states that:

Where any objective of a local area plan is no longer consistent with the objectives of a development plan for the area, the planning authority shall as soon as may be (and in any event not later than one year following the making of the development plan) amend the local area plan so that its objectives are consistent with the objectives of the development plan.

8.3.7. Given the foregoing, there are mechanisms for the planning authority to utilise when an LAP is not consistent with a new development plan. In this instance the planning authority neither amended or revoked the LAP. The planning authority have taken steps since the 2022 county development plan came into force to prepare the way for a new LAP. In the case of section 18(4)(b) it has not been demonstrated that there are conflicts in policy and with reference to 20(2B) however, it seems as if the planning authority are going in the right direction, with the review of the LAP, that commenced in November 2023.

8.3.8. The status of the Greystones-Delgany and Kilcoole LAP 2013-2019 is contested. On the one hand the appellant refers to a Board Order that states the lands are not zoned. The planning authority say that there is nothing in the 2000 Act that definitively states an LAP ceases to have effect. At a broader level, a town, settlement or other place previously with the benefit of an LAP that now ceases to be operational is not a reason alone not to consider development on its own merits.

However, the vacant site levy is dependent on the proviso that it can only be applied to lands that are either identified for regeneration or zoned. In my experience, some County and City development plans retain the intent of land use zoning objectives within their written statements with the aim to renew LAPs when resources allow. This is a sensible approach and one that is not spelt out in the 2000 Act either but in practice this is what is done. But neither does the 2000 Act specifically state that an LAP ceases to have effect (conflicting provisions noted), instead a lifespan of 6 years is applied with scope to extend by resolution. In this respect, I note that the planning authority are in the process of varying the development plan to include a statement to the effect that I have outlined above, proposed Variation 2 and 3 refer. In addition, the Greystones-Delgany and Kilcoole LAP review process is ongoing. I note that matters are clarified up to a point in the Planning and Development Act 2024, but the relevant sections of the new planning act are yet to be commenced and are not relevant to this appeal.

- 8.3.9. Given all of the foregoing, I note that the Board are required to make a decision at a particular point of time, based on the facts of the case. In this instance, though matters are underway to correct things as the planning authority see it, the relevant LAP has for all intents and purposes expired, the Board have drawn this conclusion with reference to other RZLT appeals and the lands are therefore not currently zoned in the eyes of the Board. It is my view that a levy cannot be charged for lands that are not identified for regeneration or any other land use zoning in any statutory plan. The site should be removed from the VSR, because the lands are no longer identified for regeneration or any other land use zoning, as referenced by Policy CPO 5.13 and CPO 6.35 Wicklow County Development Plan 2022-2028.

8.4. Is the site no longer vacant as of the 1st of January 2023?

- 8.4.1. In section 8.3 above, I have established that the site is no longer a vacant site in terms of section 5(1)(b) of the 2015 Act, because the lands have ceased to be identified for regeneration or any other land use zoning. The question arises at what point did that occur and how does it relate to the year concerned, in this instance 2023.
- 8.4.2. The planning authority refer to a past levy demand that was upheld by the Board, in that appeal no dispute arose with reference to land use zoning, ABP-312140-21

refers. I note that the charge for the levy demand in that case was for the year 2020. The Greystones-Delgany and Kilcoole Local Area Plan 2013-2019 took effect on 29th September 2013. The grounds of appeal with reference to ABP-312140-21, did not raise any issues of zoning and the levy demand was confirmed.

- 8.4.3. With reference to this appeal and the year concerned 2023, I refer to RZLT appeal reference ABP-316352-23, in which it is stated that the lands identified are not zoned. That order is signed the 10th November 2023 and relates to the site in question and within the LAP. The Board considered that the LAP had ceased to be in force in this instance and so I am satisfied to conclude that for the year 2023, the lands were not identified for regeneration or any other land use zoning. An assessment of the visible condition of the site with reference to section 6(6) of the 2015 Act, in terms of adverse effects on existing amenities or reduced the amenity provide by existing infrastructure and facilities (within the meaning of section 48 of the Act of 2000) in the area in which the site is situated or has adverse effects on the character of the area, is not required in this instance.

8.5. Levy Calculation

- 8.5.1. A Notice of Valuation Entered on the Vacant Site Register was issued to Brookhampton Ltd on the 15th of December 2019 stating that the valuation placed on the site is €270,000. This was appealed to the Valuation Tribunal, that through compromise determined a market value of €220,000, dated 14th October 2021.
- 8.5.2. A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to the owner on the 15th February 2024 to the value of €15,400 for the year 2020.
- 8.5.3. The levy rate applicable in this instance is 7%. The rate of levy has been increased from 3% to 7% of the market valuation of relevant sites with effect from January 2020, to be applied in respect of sites that were included on vacant site registers in 2019. It is evident, therefore, that the levy calculation has been correctly calculated.

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 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, for the year concerned or on the 13th March 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 confirm that the amount of the levy has been correctly calculated in respect of the vacant site.

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 status of the Greystones-Delgany and Kilcoole Local Area Plan 2013-2019 that is considered to be no longer in force and consequently the site was and is no longer identified for regeneration/renewal or any other land use zoning and fails to accord with the definition of regeneration land as defined under section 3 of the Urban Regeneration and Housing Act 2015 (as amended) that states “regeneration land” means land identified by a planning authority in its development plan or local area plan, after the coming into operation of section 28, in accordance with section 10(2)(h) of the Act of 2000 with the objective of development and renewal of areas in need of regeneration, and includes any structures on such land, and thus

the Board is not satisfied that the site was a vacant site for the year concerned or on the 13th March 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.

The Board considers that it is 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 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

07 March 2025