



An
Bord
Pleanála

Inspector's Report ABP-319338-24

Type of Appeal	Appeal against a Section 15 Demand for Payment.
Location	Castle Street, Bray, County Wicklow.
Planning Authority	Wicklow County Council.
Planning Authority VSL Reg. Ref.	VS/B/03.
Site Owner	Bray Property Development Limited.
Planning Authority Decision	Demand Payment.
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 €52,500 for a vacant site at Castle Street (former Everest Centre), Bray, Co. Wicklow, and identified as VS/B/03. The notice was issued to Bray Property Development Limited and dated 28th February 2024. The owner Bray Property Development 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 4th September 2019. The value of the subject site is stated to be €750,000 and this was not appealed.
- 1.3. A Notice of Proposed Entry on the Vacant Sites Register was issued to Varma Limited on the 17th November 2017. On the 4th May 2018, the Notice of Entry on the Vacant Sites Register was issued to Varma Limited. This section 7(3) notice was not appealed to the Board.

2.0 Site Location and Description

- 2.1. The appeal site is located on the northern side of Bray town centre in Co. Wicklow. It is on the north-eastern side of Castle Street, and to the south-east of the Upper Dargle Road and Dublin Road junction. Directly to the south-east of the site is the Dargle Centre which comprises a row of two storey buildings with commercial uses at ground floor level and surface car parking to the front. Land adjoining the site to the north is in use as a secondary school. The site adjoining the north-eastern boundary comprises a large area of hard standing and some warehouse buildings. Directly opposite the site is the two-storey residential development of Saint Patrick's Square with residential development of a similar character and scale on St. Cronan's Road to the south.
- 2.2. The site has been cleared, with the site secured by way of hoarding and fencing to the back of the footpath along Castle Street. Castle Street slopes southwards towards the River Dargle. The levels across the site are quite consistent except for the north-western corner along Castle Street which rises upwards. Castle Street and

the Dublin Road are earmarked for future road improvements as part of the Bus Connects, Bray – City Centre Core Bus Corridor Scheme. There is currently an application for this public transport scheme with the Board under ABP-317742-23, for which a decision has not yet been made.

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 4th May 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

PA Ref. **2460793** - A mixed-use building ranging in height from 4 to 6 storeys and accommodating 2 retail/café units fronting Castle Street and 29 apartments at ground to 5th floor levels. Decision pending.

ABP-**315393**-22 – Permission refused for a 49-unit apartment block, 6 storey apartment block, and all associated works.

PA Ref. **19/286** – Planning permission refused for the temporary use of the site for 57 surface car parking spaces with associated lighting, temporary accommodation on site and perimeter fencing.

4.2. **VSL History:**

None recorded as appeals to the Board.

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, no active use for buildings or yard. The condition of the buildings are neglected and impact the character of the area, a lack of maintenance is noted. Change of ownership noted but does not affect levy for 2023. 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 (Bray Property Development Limited) by notice issued under section 15 of the 2015 Act that the subject site (Planning Authority site ref. VS/B/03) is now liable for a payment of the levy for 2023 of €52,500 Payment terms and methods are outlined, dated 28th February 2024.

- 5.2.2. All previous relevant notices are ordered chronologically within the appeal file and I have noted the administrative sequence of events. I am satisfied that the site was correctly placed on the register in accordance with the 2015 Act and the appellant makes no reference to any administrative or procedural errors.

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 appellant is the new owner of the site since 25th March 2022, deed of conveyance submitted.
- Planning permission was applied for a development on the 30th September 2022, delays were encountered with reference to a CPO and the Bus connects route. The planning application was refused by the planning authority and subsequently appealed to the Board (31st January 2023), a decision is awaited. A desire to develop the site and a track record of developing other sites around the country is presented.
- Since taking ownership of the site, the appellant has worked with Bray Tidy Towns to ensure the site is safe and hoarding remains attractive.

The appeal is accompanied by correspondence from the Property Registration Authority, a Deed of Conveyance, Land Registry Map, National Transport Authority CPO and Maps, email correspondence with Bray Tidy Towns.

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 of 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 4th May 2018, no appeal to the Board was made under Section 9 of the 2015 Act. 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 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, it is not necessary 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

- 7.3.2. The owner has not advanced any actual use for the site for the year concerned, in this case 2023. The appellant states that as new owners, they purchased the site on the 25th March 2022, and applied for planning permission that is still on appeal with

the Board. Since the lodgement of this VSR appeal, the Board have issued a decision to refuse permission in relation to ABP-315393-22. In the meantime, according to the owner, the site has been kept tidy and well maintained. The owner has submitted email correspondence with Bray Tidy Towns about keeping the site in good order and maintaining hoarding. I do not consider that the responsible actions of any landowner, to maintain and make secure their site could be considered as an actual use to lift the site from the register in this instance. From my observations of the site, I see that it has been cleared of vegetation, however, some building materials still remain on the site. The condition of hoarding and fencing on the site has deteriorated, it has become loose and fallen in places. The site as I observed is untidy, not well maintained and affects the character of the area and this is mirrored by the PA report and photographs dated January 2024, and most relevant to the appeal on hand.

- 7.3.3. The appellant raises the issue of a change of ownership within the grounds of appeal. The 2015 Act makes some allowance in the instance where a change of ownership occurs and section 17 refers as follows:

(1) Notwithstanding sections 15 and 16, where in any year there is a change in ownership of a vacant site the amount of vacant site levy to be charged in respect of that site for that year, and for the preceding year, shall be zero.

(2) Subsection (1) shall not apply where—

(a) ownership of the site transfers from one company to an associated company,

(b) the owner of the site transfers it to a connected person (other than where ownership of the site devolves on the death of the owner), or

(c) ownership of the site changes, in the opinion of the planning authority in whose functional area the site is located, for the sole or principal purpose of avoiding the obligation to pay vacant site levy.

(3) In subsection (2) “associated company”, in relation to another company, means—

(a) a holding company or a subsidiary (both within the meaning of the Companies Act 2014) of that other company, or

(b) a body corporate that is a subsidiary of the same company of which the other company is a subsidiary.

(4) For the purposes of this section a person is connected with the owner of a vacant site if, but only if, he or she is—

(a) that owner's spouse, civil partner, parent, brother, sister, child, step-child or lawfully adopted child,

(b) a person acting in his or her capacity as the trustee of any trust, the principal beneficiaries of which are the owner of the vacant site, the owner's spouse or any of the owner's children or any body corporate which the owner controls, or

(c) a partner of that director.

(5) A body corporate shall also be deemed to be connected with the owner of a vacant site if it is controlled by that owner.

(6) For the purposes of this section, an owner of a vacant site shall be deemed to control a body corporate if, but only if, he is, alone or together with any of the persons referred to in paragraph (a), (b) or (c) of subsection (4), interested in more than one-half of the equity share capital of that body or entitled to exercise or control the exercise of more than one-half of the voting power at any general meeting of that body.

(7) In subsection (6) —

(a) "equity share capital" has the same meaning as in section 7 of the Companies Act 2014, and

(b) references to voting power exercised by a director shall include references to voting power exercised by another body corporate which that director controls.

- 7.3.4. In this instance, the change of ownership occurred in March 2022, as per the Deed of Conveyance submitted by the appellant, it follows that section 17(1) should be consulted to determine if a levy should be charged. Ownership changed in 2022, the levy for that year should be zero and also for the preceding year 2021. However, it is clear that a levy should be charged for 2023 as there is no allowance made in the 2015 Act for subsequent years to avoid a charge with reference to change of

ownership alone. I am satisfied that section 17(1) of the 2015 Act cannot be deployed in favour of the owner in this instance and all other things being equal the levy should be charged.

7.3.5. In terms of a use for the site, from the information on file and my own observations of the site I can see that the condition of the site has not changed significantly since first placed on the site. The site has however, been cleared of vegetation, but some pockets of building materials remain on the site. In my view the condition of the site still represents an adverse impact on the character of the area and the areas of smart hoarding referred to by the owner have fallen into disrepair and replaced with wire fencing. No actual use as been advanced for the site and the criteria under section 6(6) of the 2015 Act, still apply, the site is still a vacant site.

7.3.6. 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 (20th March 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 Veema Limited on the 4th September 2019 stating that the valuation placed on the site is €750,000, no appeal was made to the Valuation Tribunal.

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 Bray Property Development Limited on the 28th February 2024 for the value of €52,500.

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.

7.5. Other Matters

7.5.1. The appellant refers to attempts made to secure planning permission for residential development for the site and sets out their track record on developing other sites around the country. In addition, proposed public infrastructure projects (BusConnects and CPOs associated with same) have hindered and delayed progress on advancing this site to residential use.

- 7.5.2. I note that the appellant applied for permission to develop the site for a 49 unit apartment block, this application was refused on appeal for density and design reasons, ABP-315393-22 refers. I also note that the BusConnects Bray to City Centre Core Bus Corridor Scheme a project led by the National Transport Authority, is yet to be decided, ABP-317742-23 refers. Judging from correspondence submitted by the appellant it is apparent that the National Transport Authority did not raise adverse issues with regard to the apartment scheme and this should not therefore be seen as a hindrance to development of the site. With reference to any Compulsory Purchase Orders either decided or in train, I have no definitive information on that matter. Lastly, I note that a revised planning application has been lodged with the planning authority but no decision has been made on that proposal.
- 7.5.3. Irrespective, of any planned intentions and hopes for the site in question, the Act is clear: the test for inclusion on the register is the past condition of the site from the date of entry on the Register. I refer to Circular Letter PL7/2016, Appendix 3, that states: “where a vacant site has an extant planning permission associated with it, this should not be a consideration in determining whether to apply the levy. If such a site meets the criteria for a vacant site in respect of either residential or regeneration land, then the levy may be applied”. In this instance, though plans and proposals have been written, there is not an operative planning permission for the site in question. In my opinion, the site meets the criteria for inclusion on the VSR and the intention to develop the site in the future has no weight in this assessment. It is the aim of the Act to apply to all residential or regeneration land irrespective of planning permission or an intent to apply for planning permission or any other form of paper based administrative actions. On that basis the site is considered appropriate for inclusion and retention on the register and for a levy to be charged for the appropriate year.

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 20th March 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 1 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