



An
Bord
Pleanála

Inspector's Report ABP-320296-24

Type of Appeal

Appeal against a Section 15 Demand for Payment.

Location

Lands at Ballymoneen Road, Galway.

Planning Authority

Galway City Council.

Planning Authority VSL Reg. Ref.

VS-011-WEST.

Site Owner

Cairn Homes Galway Limited.

Planning Authority Decision

Demand for payment of Vacant Site Levy.

Date of Site Visit

21 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 the Vacant Site Levy issued by Galway City Council, stating their demand for a vacant site levy for the year 2023 amounting to €28,000 for a vacant site at Lands at Ballymoneen Road, Galway, and identified as VS-011 WEST. The notice was issued to Cairn Homes Properties Limited and dated 2nd July 2024. The owner Cairn Homes Galway Limited has appealed the Demand for Payment Notice issued pursuant to Section 15 of the Urban Regeneration and Housing Act 2015.
- 1.2. A valuation pertaining to the site was issued by Galway City Council on the 11th August 2020. The value of the subject site is stated to be €400,000, there is no information on file to show that this was appealed to the Valuation Tribunal.
- 1.3. A Notice of Proposed Entry on the Vacant Sites Register was issued to Cairn Homes Properties Limited the 14th January 2019. On the 12th March 2019, the Notice of Entry on the Vacant Sites Register was issued to Cairn Homes Properties Limited. This section 7(3) notice was appealed and confirmed by Board Order dated 3rd July 2020.

2.0 Site Location and Description

- 2.1. The subject site of 0.32 Hectares is located on the western side of Ballymoneen Road, in the western suburbs of Galway City. The site is greenfield in character and rises upwards from the public road. The Fána Buí residential estate is located to the south across a laneway that leads to a private dwelling, Keeraun House. A number of detached dwellings are located to the north of the site and a new housing estate is located across the road to the east, Maolchnoc. The appeal site has been cleared of vegetation.

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)(a) of the 2015 Act. A

section 7(3) Notice was issued and the site was subsequently entered onto the register after an appeal to the Board.

- 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. Galway City Development Plan 2023-2029

The relevant plan is the Galway City Development Plan 2023-2029.

The lands are zoned R-Residential: To provide for residential development and for associated support development, which will ensure the protection of existing residential amenity and will contribute to sustainable residential neighbourhoods.

Under Section 11.2.8 of the Plan, Residential is compatible with the R-Residential zoning objective.

The route of the N6 Galway City Ring Road (N6 GCRR) is mapped to the north and west of the site. A portion of the site frontage is included within the N6 GCRR route and approaches, as shown on development plan maps and road improvements are highlighted for the area.

- 3.2.2. The Sustainable Mobility and Transportation chapter of the development plan includes Section 4.8 Specific Objectives that states the following:

- Objective 9. Identify through a review of the Galway Transport Strategy the need for bus transport in areas of Galway City currently not serviced by bus transport to include rural Bushypark, Circular Road, Upper Ballymoneen Road, Menlough and other locations as appropriate.

- Objective 23 states the following: “Reserve the route corridor of the N6 Galway City Ring Road (N6 GCRR) project as approved with conditions and modifications by An Bord Pleanála which accommodates the designated strategic road and the associated bridge crossing of the River Corrib”.
- Objective 24 states the following: Give priority to the reservation the N6 GCRR designed strategic road corridor and any associated land requirements over other land uses and objectives in the City Development Plan and prohibit developments within the designed strategic road corridor which could potentially prejudice the development of this strategic road and river crossing.
- Objective 35. Carry out an audit of the road network relative to pedestrian services and standards in all areas outside of the city centre and implement a programme of improvements in accordance with a scheme of priorities relative to accessibility, safety and convenience. Priority of investigation will be given to the following roads namely: Circular Road, Letteragh Road and Ballagh Road, Ballymoneen Road, Cappagh Road, Castlegar Road and all other local roads as deemed necessary.

4.0 Planning History

4.1. Subject site

PA Ref. 06/481: On the 15th March 2007 planning permission was granted for the construction of 210 residential units and commercial development at lands including the subject site.

4.2. VSL History:

ABP-304152-19 - Vacant Site Levy – Notice confirmed.

4.3. RZLT History

PA Ref. GLWC-C15-RZLT-4, ABP Ref. ABP-320385-24: On the 8th October 2024 the Board decided to confirm the determination of the local authority to retain the subject lands on the RZLT map.

PA Ref. GLWC-C6-RZLT-3, ABP Ref. 316817-23: On the 21st August 2023 the Board decided to confirm the determination of the local authority to retain the subject lands on the RZLT map.

5.0 Planning Authority Decision

5.1. Planning Authority Reports

5.1.1. Planning Report

- Report dated 19/12/16 and 05/12/18 – this is the initial section 7(3) notice report.
- Site photographs dated 2016 are on file.

5.2. Planning Authority Notice

5.2.1. Galway City Council advised the site owner (Cairn Homes Limited) by notice issued under section 15 of the 2015 Act that the subject site (Planning Authority site ref. VS-011 WEST) is now liable for a payment of the levy for 2023 of €28,000 Payment terms and methods are outlined, dated 2nd July 2024.

5.2.2. With reference to previous relevant notices that concern the procedure for placing the site on the register. 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 leading up to the section 15 demand notice.

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:

- Submissions and appeals with reference to the RZLT have hindered the progression of the site to planning permission.

- Legal challenges and uncertainty about the Galway City Ring Road have delayed efforts to develop the site and all of these matters have been raised in previous appeals with reference to RZLT.
- The lands have physical constraints that make development of the site challenging. The site is sloped and relatively narrow, wayleaves for services are required and there are service connection issues.
- The site continues to be vacant for the relevant period, but considerable efforts have been made to progress matters.
- The site is transected by the route of the Galway City Ring Road and it is noted that other planning applications along the route of the road have been refused permission by the planning authority. It is noted that the Board take a contrary view concerning any appeals made in this respect, but this all adds to the delays in making a planning application for the site.

The appeal is accompanied by correspondence from Galway City Council and documents prepared in response to the RZLT appeals and the Galway Ring Road.

6.2. Planning Authority Response

- The site is partially included within overall lands that are included on RZLT maps, and currently on appeal with the Board, reference ABP-320385-24 refers.

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) of the Act states that the planning authority is of the opinion that the site referenced is a vacant site within the meaning of Section 5(1) and 5(2) of the Act. The Notice is dated the 12th March 2019 and is accompanied by a map outlining the extent of the site to which the Notice relates. The section 7(3) Notice of Entry on the Vacant Sites Register was issued on the 12th March 2019, an appeal to the Board was made under Section 9 of the 2015 Act on the 5th April 2019 and the notice was confirmed by the Board on the 3rd July 2020. 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 the initial vacancy of the site and its qualification to be included on the register has already been adjudicated on and should not be re-examined.

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 and accepts that it continues to be in a vacant state. The appellant sets out that a variety of administrative activities have hampered the narrowing down of an actual use for the site. The list of activities includes several RZLT submissions, and these were unsuccessful in their attempts to avoid confirmation of the determination of the local authority to include the site on the residential zoned land tax draft and final maps.

7.3.3. The appellant also states that uncertainty over the Galway City Ring Road has delayed matters further and that the uncertainty revolves around other sites along the route being refused planning permission by the planning authority.

Documentation on the file shows that the land requirements for the Galway Ring Road have progressed and that land parcels have been identified for compulsory purchase, but I do not know the definitive scenario for the road now or in the future. From my observations of the area that fall within the scope of the Galway Ring Road as detailed on development plan maps, I see that housing construction is well under way and some developments are nearing completion. In that context, the appellant does acknowledge that the Board have taken a contrary view and granted permission for development despite the imposition of the Galway Ring Road route. Though the planning environment of the immediate area may be complex, the appellant has not advanced any proposals to the planning stage in recent times. Irrespective of any planned intentions and hopes for the wider area and the site in question, the Act is clear: the test for inclusion 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, the appellant has no planning permission in place and no clear intentions for the site in question.

7.3.4. 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, and presents a tidy appearance to the street. However, no apparent use pertains to the site and the appellant confirm this fact. 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 (30th July 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 Cairn PLC on the 11th August 2020 stating that the valuation placed on the site is €400,000, no evidence of an appeal to the Valuation Tribunal is present on the file.
- 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 Cairn Homes Properties Limited on the 2nd July 2024 for the value of €28,000.
- 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 30th July 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

26 February 2025