



An
Bord
Pleanála

Inspector's Report ABP-320475-24

Type of Appeal

Appeal against a Section 18 Demand for Payment.

Location

Lands at Station Road, Piercetown,
Newbridge, Co. Kildare

Planning Authority

Kildare County Council

Planning Authority VSL Reg. Ref.

NEW-01

Site Owner

Patrick and Thomas Leeson

Site Visit

7th February 2025

Inspector

Emma Nevin

1.0 Introduction

1.1. This appeal refers to a Section 15 Notice of Demand for Payment of Vacant Site Levy issued by Kildare County Council, dated 9th July 2024, stating their demand for a vacant site levy for the years 2021, 2022 and 2023 amounting to €378,000.00 for vacant site at Lands at Station Road, Piercetown, Newbridge, Co. Kildare and identified as NEW-01. The appeal site has three stated registered owners Partick Leeson, Thomas Leeson, and Thoival Properties Limited.

1.2. A Notice of Proposed Entry on the Vacant Sites Register was issued to Mr. Partick Leeson, and Mr. Thomas Leeson on 8th October 2020. On the 18th of December 2020, the Notice of Entry on the Vacant Sites Register was issued to Mr. Partick Leeson, and Mr. Thomas Leeson. This section 7(3) notice was appealed to the Board under reference ABP-309170-21. It was determined:

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 need for housing in the area, and

(e) the fact that the site is suitable for the provision of housing by reference to the provision of public infrastructure and facilities (within the meaning of Section 48 of the Planning and Development Act 2000, as amended) necessary to enable housing to be provided and serviced,

The Board considered that it was appropriate that a notice be issued to the planning authority who shall confirm entry on the Vacant Sites Register.

1.3. A valuation pertaining to the site was issued by Kildare County Council on the 14th of October 2022 to Mr. Partick Leeson, Mr. Thomas Leeson, and Thoival Properties Limited. The value of the subject site is stated to be €3,500,000.00 (Three Million, Five Hundred Thousand Euro). The Determination of Market Value was appealed to the Valuation Tribunal. A Notification of Agreement was issued by the Valuation Tribunal issued on the 8th of May 2024 wherein the market value of the site is

confirmed at €1,800,000.00 (One Million, Eight Hundred Thousand Euro). Kildare County Council is in agreement with the valuation amount as per correspondence dated 2nd May 2024.

- 1.4. A Notice of Demand for Payment of Vacant Site Levy for the year 2021 under Section 15 of the Urban Regeneration and Housing Act was issued to Mr. Partick Leeson, Mr. Thomas Leeson, and Thoival Properties Limited on the 9th of July 2024 for the value of €126,000.00.
- 1.5. A Notice of Demand for Payment of Vacant Site Levy for the year 2022 under Section 15 of the Urban Regeneration and Housing Act was issued to Mr. Partick Leeson, Mr. Thomas Leeson, and Thoival Properties Limited on the 9th of July 2024 for the value of €126,000.00.
- 1.6. A Notice of Demand for Payment of Vacant Site Levy for the year 2023 under Section 15 of the Urban Regeneration and Housing Act was issued to Mr. Partick Leeson, Mr. Thomas Leeson, and Thoival Properties Limited on the 9th of July 2024 for the value of €126,000.00.
- 1.7. The appellant (Mr. Partick Leeson, Mr. Thomas Leeson) appealed the Demand for Payment Notice issued pursuant to Section 15 of the Urban Regeneration and Housing Act, for 2023, under which forms the current appeal before the Board.

2.0 Site Location and Description

- 2.1. The subject site is located to the north of the town centre area along the R416 (Station Road) which leads out from the main street to the railway station. The Department of Defence is located on the northern side of Station Road opposite the site. On the southern side of the Road there is a signalised junction which provides access into a gym complex, car park and a five storey apartment block located west of this centre. The subject site has an area of c.1.922 hectares as part of a larger tract of land that was developed by the appellants. It is irregular in shape and is located opposite the Department of Defence accessed off Station Road (R416). The site boundary consists predominantly of hoarding, which is damaged in places. Levels across the site are relatively flat. The rear of the site (western boundary) for

the most part runs along the rear gardens of adjoining houses which form part of The Paddock housing development.

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)(a) of the Act. A section 7(3) Notice was issued 18th December 2020, and the site was subsequently entered onto the register on that date.

3.1.2. Section 5(1) of the act says –

1) In this Part, a site is a vacant site if—

(a) in the case of a site consisting of residential land—

i) the site is situated in an area in which there is a need for housing

ii) the site is suitable for the provision of housing, and

iii) the site, or the majority of the site, is - (I) vacant or idle, or (II) being used for a purpose that does not consist solely or primarily of the provision of housing or the development of the site for the purpose of such provision.....

3.1.3. Section 6(5) of the act says –

A planning authority, or the Board on appeal, shall determine whether or not a site was suitable for the provision of housing for the purposes of this Part by reference to—

(a) the core strategy

(b) whether the site was served by the public infrastructure and facilities (within the meaning of section 48 of the Act of 2000) necessary to enable housing to be provided and serviced, and

(c) whether there was any thing affecting the physical condition of the land comprising the site which might affect the provision of housing 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.

3.1.4. Section 18 (2) of the Act states –

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

(a) the site, or a majority of the site, was no longer a vacant site on 1 January in the year concerned, and

(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”.

3.1.5. Section 18(3) of the Act states –

“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”.

Subsections set the detail and exceptions in relation to change of ownership.

4.0 Development Plan

4.1. Kildare County Development Plan 2023-2029

4.1.1. Relevant Development Plan Policy:

- Chapter 2 – Core Strategy and Settlement Strategy:

CS O9 “Review and prepare on an ongoing basis a portfolio of Local Area Plans (LAPs) for the mandatory LAP settlements (and environs, where appropriate) of Naas, Maynooth, Newbridge, Leixlip, Kildare, Athy, Celbridge, Kilcock, Monasterevin, Sallins, Clane and Kilcullen in accordance with the objectives of the County Development Plan and all relevant Section 28 Ministerial Guidelines”.

Objective CS O5 “Promote compact growth and the renewal of towns and villages through the development of underutilised town centres and brownfield sites, and where appropriate, pursue through active land management measures a co-

ordinated planned approach to developing appropriately zoned lands at key locations, including regeneration areas, vacant sites and under-utilised areas in cooperation with state agencies, while also maintaining a 'live' baseline dataset to monitor the delivery of population growth on existing zoned and serviced lands to achieve the sustainable compact growth targets of 30% of all new housing within the existing urban footprint of settlements".

- Chapter 3 – Housing:

Section 3.2 Strategy "Engaging in active land management to promote regeneration including utilising the Vacant Sites Register and other future vehicles, including the Zoned Land Tax".

- Chapter 4 – Resilient Economy and Job Creation:

RE O37 "Continue to promote the sustainable development of vacant residential and regeneration sites in towns that are the subject of a statutory Local Area Plan, through the application of the Urban Regeneration and Housing Act 2015 (as amended), Vacant Site Levy³, on lands zoned for Town Centre, Regeneration and Residential uses".

- Chapter 8: Urban Centres and Retail

Action RET A3 "Identify obsolete and potential renewal areas and, through active and positive engagement with landowners, to encourage and facilitate the re-use and regeneration of derelict land and buildings in the county's main towns, villages and smaller centres. The Council will use its statutory powers, including the Derelict Sites Act (as amended), the Vacant Site Levy 4 and/or Compulsory Purchase Order, where necessary".

4.1.2. Newbridge Local Area Plan 2013 – 2019, as extended:

4.1.3. The Newbridge LAP is currently under review i.e. Pre Draft Stage of the Newbridge Local Area Plan 2025 – 2031.

4.1.4. Under the Local Area Plan 2013 – 2019, as extended, the site is part of lands designated C5 (New Residential).

4.1.5. Relevant Sections:

- Section 7.5.8 ‘Renewal, Re-use and Regeneration’ – *“While some positive changes have taken place in terms of town centre uses, there remains some derelict premises and vacant sites within the town centre, in particular those directly east of Cutlery Road. Vacant sites threaten the vitality and viability of the town centre. The Plan aims to provide the framework for a more integrated approach to new development in the town centre in particular Edward Street/Main Street /Charlotte Street/Eyre Street area being a focus for achieving greater linkage and commercial synergy”.*
- 8.9 ‘Dereliction’ – *“DT 1: To survey derelict or vacant sites and to encourage and facilitate the re-use and regeneration of derelict land/buildings in Newbridge as a priority. The Council will use its powers, where appropriate, to consider such sites for inclusion in the Register of Derelict Sites”.*

5.0 Policy History

5.1. There is an extensive planning history pertaining to this site. The following are considered of relevant to the instance appeal.

- PA Reg Ref. 18/1491 refers to a 2019 grant of permission for 12. No. townhouses. Connection to roads and services as permitted under PA Reg. Ref. 18/207, bin store, car parking, landscaping, and all associated site development works.
- PA Reg Ref. 18/207 refers to a 2018 grant of permission for 96 apartments in 2 no. 4 storey apartment blocks, access roads, surface parking, drainage, landscaping and all associated site development works.

5.2. There is a previous VSL appeals pertaining to this site:

- PA Ref NEW-01 (ABP 320475-24) refers to an appeal by Thomas Leeson and Patrick Leeson regarding a Section 9 Appeal against section 7(3) Notice. against as section 18 Demand for Payment. The Board determined that the site was a vacant site within the meaning of the act. The Board considered it the Board considered that it is appropriate that a notice be issued to the planning authority who shall confirm the entry on the Vacant Sites Register.
- VS-005 Site is on the Vacant Site Register.

6.0 Planning Authority Decision

6.1. Register of Vacant Sites Report:

6.1.1. A Report (2nd July 2024) was prepared for the site (Vacant Site NEW-01) to determine commencement of works, planning history and extracts from site layouts permitted, site photos and the approximate area of land developed or under development in site plan. The following key points are noted:

- Site visit undertaken on 26th June 2024
- Aerial Images for 2020 and 2023 are included in the report.
- The Planning Authority stated that development had commenced on parts of the site indicated on the map within the report at time of inspection 26th June 2023.
- The Planning Authority stated that no development on site prior to 5th June 2023.

6.1.2. **In terms of criteria set out in section 5(1)(a) it is detailed that:**

- (i) the site is situated in an area in which there is a need for housing.
- (ii) the site is suitable for the provision of housing, and
- (iii) the site, of the majority of the site is vacant or idle.

6.2. Planning Authority Notices

- 6.2.1. A Notice of Determination of Market Value was issued to Mr. Partick Leeson, Mr. Thomas Leeson, and Thoival Properties Limited on the 2nd May 2024 stating that the Council is in agreement with the valuation amount of €1,800,000.00.
- 6.2.2. A Notice of Demand for Payment of Vacant Site Levy for the year 2021 under Section 15 of the Urban Regeneration and Housing Act was issued to Mr. Partick Leeson, Mr. Thomas Leeson, and Thoival Properties Limited on the 9th of July 2024 for the value of €126,000.00.
- 6.2.3. A Notice of Demand for Payment of Vacant Site Levy for the year 2022 under Section 15 of the Urban Regeneration and Housing Act was issued to Mr. Partick

Leeson, Mr. Thomas Leeson, and Thoival Properties Limited on the 9th of July 2024 for the value of €126,000.00.

6.2.4. A Notice of Demand for Payment of Vacant Site Levy for the year 2023 under Section 15 of the Urban Regeneration and Housing Act was issued to Mr. Partick Leeson, Mr. Thomas Leeson, and Thoival Properties Limited on the 9th of July 2024 for the value of €126,000.00.

6.2.5. This amounts to a total outstanding levy due of €378,000.00, 7% of the market value.

7.0 The Appeal

7.1. Grounds of Appeal

7.1.1. The landowners have submitted an appeal to the Board, against the decision of Kildare County Council against the Demand for Payment. The grounds of the appeal can be summarised as follows:

- The site is no longer a vacant site on the date on which the appeal under this section is made as set out in Section 18 (3) of the Act.
- The site was initially entered onto the register on the 18th of October 2020.
- The valuation of the site was determined to be 1,800,00 on the 8th May 2024 following appeal.
- The instant appeal is accompanied by a report prepared by Brian Connolly and Associates Consulting Engineers which sets out the works carried out and the details of commencement notices issued, and work carried out on foot of same since 2023.
- In addition, the internal access road has been constructed accessing the overall development site.
- The works are extensive and are continuing.
- As such the site is no longer vacant, as at the date of the appeal under Section 18 (3) of the Act the site is no longer vacant, and no levy is therefore payable for 2023.

7.2. Planning Authority Response

- 7.2.1. The Planning Authority had no further comment to make in respect of the submitted appeal.

8.0 Assessment

8.1. Introduction

- 8.1.1. 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.

- 8.1.2. I draw the Boards attention to the Planning History associated with this site and ABP 309170-21 appeal against a section 18 Demand for Payment for the year 2020, respectively.

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)(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.

8.3. Is it a Vacant Site?

- 8.3.1. A Section 7(3) Notice of Entry on the Vacant Sites Register was issued on the 18th of December 2020. An assessment was carried out by the Planning Authority as to whether the site constituted a vacant site under section 5(1)(a). Following an assessment the site was placed on the register; these matters have not changed.
- 8.3.2. The appellants dispute that the site continues to be vacant at the time of appeal as construction work had commenced.
- 8.3.3. The planning authority were correct to issue the demand for payment of the levy for

2021, 2022 and 2023 based on the vacancy of the site on 1st January of the relevant years. Nevertheless, while the planning authority's demand was correctly based on the circumstances of the site on 1st January 2023 section 18(3) requires the board to also consider the vacant status of the site on the date an appeal is made, which in this case was 2nd August 2024.

- 8.3.4. Permission granted under KCC Ref. 181491 for 12 houses on lands to the west portion of the site, connecting to roads and services as permitted under Planning Ref. No. 18/207, pertains to commencement notice (CN0106031KE) submitted to Kildare County Council on 22nd September 2023, with a commencement date of 6th October 2023. Commencement notice (CN0106031KE) dated 22nd September 2023 gave notice to implement permission from 25th September 2023. The appellant submitted that no demand for 2023 can be made as works commenced on site in August 2023 under the permission granted Ref: 181491.
- 8.3.5. Copies of the commencement notices and photographic evidence has been submitted as part of the appeal detailing various works carried out under the aforementioned permission, including site preparation works in August 2023, up to construction works in November 2023, which detailed the erection of blockwalls of the terrace (Block 1) of houses 1 – 6, with the partial roof construction to the terrace.
- 8.3.6. The appellant also references the construction of the access road to the rear portion of the site. These 12 no. dwellings were constructed and occupied, with the access road constructed at time of my site inspection. I also note that construction work was ongoing on site, in relation to subsequent permissions granted for residential and commercial uses on the overall site, that are not related to the instant appeal.
- 8.3.7. The site area subject to the permission granted under KCC Ref. 181491, as referenced in the appeal pertained to a site area of 0.3 hectares (as per planning application Ref. 181491) of the overall 1.9 hectare site, which was subject to the Vacant Site Levy.
- 8.3.8. As such I consider that these works commenced in 2023 only pertain to a very small proportion of the overall site area and therefore cannot be considered to oppose section 5(1)(a)(iii) that refers to the majority of the site being vacant or idle, which in this case it was and is. I am satisfied that the site met all the criteria with reference to residential lands under section 5(1)(a) of the 2015 Act.

8.3.9. I also reference Section 18 of the Urban Regeneration and Housing Act 2015 (as amended), in particular section (2) which states that,

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

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

8.3.10. The development commenced under this application pertained to the construction of 12 no. dwellings pertaining to some 0.3 hectares of the overall 1.9 hectare site subject to the VSL. As stated under Section 18 (2) (a) of the Regulations, I do not consider that a significant part of the landholding, was no longer vacant, on the date on which the appeal under this section is made, in accordance with Section 18 (3) of the Act.

8.3.11. Moreover the majority of the site is vacant or idle in accordance with Section 5(1)(a)(i)(ii) and (iii).

8.3.12. Based on the information submitted and the evidence presented by the Planning Authority, and the appeal, I am satisfied that for the year 2023, the majority of the site was vacant in accordance with the Act.

8.4. Levy Calculation

8.4.1. A valuation pertaining to the site was issued by Kildare County Council on the 14th of October 2022 to Mr. Partick Leeson, Mr. Thomas Leeson, and Thoal Properties Limited. The value of the subject site is stated to be €3,500,000.00 (Three Million, Five Hundred Thousand Euro). The Determination of Market Value was appealed to the Valuation Tribunal. A Notification of Agreement was issued by the Valuation Tribunal issued on the 8th of May 2024 wherein the market value of the site is confirmed at €1,800,000.00 (One Million, Eight Hundred Thousand Euro). Kildare County Council was in agreement with the valuation amount as per correspondence dated 2nd of May 2024

8.4.2. A Notice of Demand for Payment of Vacant Site Levy for the year 2021 under Section 15 of the Urban Regeneration and Housing Act was issued to Mr. Partick Leeson, Mr. Thomas Leeson, and Thoal Properties Limited on the 9th of July 2024 for the value of €126,000.00.

- 8.4.3. A Notice of Demand for Payment of Vacant Site Levy for the year 2022 under Section 15 of the Urban Regeneration and Housing Act was issued to Mr. Partick Leeson, Mr. Thomas Leeson, and Thoival Properties Limited on the 9th of July 2024 for the value of €126,000.00.
- 8.4.4. A Notice of Demand for Payment of Vacant Site Levy for the year 2023 under Section 15 of the Urban Regeneration and Housing Act was issued to Mr. Partick Leeson, Mr. Thomas Leeson, and Thoival Properties Limited on the 9th of July 2024 for the value of €126,000.00 – this is the subject of the current appeal.
- 8.4.5. The total outstanding levy due for the years 2021, 2022 and 2023 amounts to €378,000.00.
- 8.4.6. The rate of levy was 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. The levy rate applicable in this instance is 7% and 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 confirm that the site was a vacant site for the year 2021. In accordance with Section 18(2) of the Urban Regeneration and Housing Act 2015 (as amended), the Board confirm that the majority of the site was vacant at the time the levy was applied and 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.

10.0 Reasons and Considerations

- 10.1. 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 issuing of the demand for payment for 2023.

- (b) The grounds of appeal submitted by the appellant,
- (c) The report of the Planning Inspector,
- (d) the need for housing in the area, the site is suitable for the provision of housing as demonstrated by the residential land use zoning for the area, and that insufficient reason is put forward to cancel entry on the Vacant Sites Register,
- (e) That the majority of the site is and was vacant/idle for the period concerned,
- (f) The amount of the levy has been correctly calculated at 7% of the site value in 2023,
- (g) There has been no change in the ownership of the site during the period concerned, 2023, the Board is satisfied that the site was a vacant site for the year 2023 and the amount of the levy has been correctly calculated. The demand for payment of the vacant site levy under Section 15 of the Urban Regeneration and Housing Act 2015 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.

Emma Nevin

Planning Inspector

13th February 2025