



An
Bord
Pleanála

Inspector's Report ABP-321547-24

Type of Appeal

Appeal against a Section 18 Demand for Payment.

Location

Lands at Mill Road, Saggart, County Dublin

Planning Authority

South Dublin County Council

Planning Authority VSL Reg. Ref.

SD/VS365

Site Owner

Jackie Cosgrave

Site Visit

19th 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 South Dublin County Council, dated 28th of November 2024, stating their demand for a vacant site levy for the year 2023 amounting to €126,000.00 for vacant site at Mill Road, Saggart, County Dublin and identified as SD/VS365. The appeal site has one stated registered owner Jackie Cosgrave.
- 1.2. A Section 15 Notice of Demand for Payment of Vacant Site Levy was issued by South Dublin County Council, stating their demand for a vacant site levy for the year 2020 amounting to €126,000.00 for vacant site at Mill Road, Saggart, County Dublin was issued to Jackie Cosgrave. The Demand for Payment Notice issued pursuant to Section 15 of the Urban Regeneration and Housing Act was appealed to the Board under reference ABP-308733-20. It was determined:

Having regard to:

- (i) The information placed before the Board by the Planning Authority in relation to the entry of the site on the Vacant Sites Register.
- (ii) The grounds of appeal submitted by the appellant.
- (iii) The report of the Planning Inspector.

It is considered that:

- (a) it has not been shown that the site was no longer a vacant site within the meaning of the Urban Regeneration and Housing Act 2015, as amended, on the 1 January of the year concerned or that the amount of the levy has been incorrectly calculated in respect of the site by the planning authority, and
- (b) the site continued to be a vacant site on the date on which the appeal was made.

The Board confirmed the demand for payment of vacant site levy as calculated by the planning authority.

- 1.3. A Notice of Proposed Entry on the Vacant Sites Register was issued to Jackie Cosgrave on the 31 October 2018. On the 18 December 2018, the Notice of Entry on the Vacant Sites Register was issued. This section 7(3) notice was appealed to the

Board on the 23 January 2019 under ABP-303527-19. On the 6th of August 2019, it was determined:

Having regard to:

- (a) The information submitted to 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 Inspector.

The Board confirmed it appropriate that a notice be issued to the Planning Authority to confirm the entry on the Vacant Sites Register.

- 1.4. A valuation pertaining to the site was issued by South Dublin County Council on the 16th of October 2019. The value of the subject site is stated to be €1,800,000.
- 1.5. A Notice of Demand for Payment of Vacant Site Levy for the year 2019 under Section 15 of the Urban Regeneration and Housing Act was issued to Jackie Cosgrave on the 20th of October 2020 for the value of €126,000.00 – the Council note that there was a typo in this letter issued and this was rectified.
- 1.6. A Notice of Demand for Payment of Vacant Site Levy for the year 2020 under Section 15 of the Urban Regeneration and Housing Act was issued to Jackie Cosgrave on the 22nd of November 2021 for the value of €126,000.00.
- 1.7. 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 Jackie Cosgrave on the 24th of November 2022 for the value of €126,000.00.
- 1.8. 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 Jackie Cosgrave on the 9th of November 2023 for the value of €126,000.00.
- 1.9. 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 Jackie Cosgrave on the 28th of November 2024 for the value of €126,000.00.
- 1.10. The appellant (Jackie Cosgrave) has appealed the Demand for Payment Notice issued pursuant to Section 15 of the Urban Regeneration and Housing Act, for the year 2023, under which forms the current appeal before the Board.

2.0 Site Location and Description

- 2.1. The site comprises an area of land to the rear of existing dwellings that front Mill Road which is located between Saggart Village and the N7 to the north. The site cannot be readily viewed from the public road. It has an access onto Mill Road between two existing residential properties. It is adjoined on its remaining boundaries by Citywest Golf Club. The site is currently inaccessible with fencing and hedging forming its boundary with the public road.

3.0 Statutory Context

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 2018, 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. South Dublin County Development Plan 2023-2029

4.1.1. The site is zoned RES-N (New Residential) in the County Development Plan the objective of which is *“to provide for new residential communities in accordance with approved area plans”.*

4.1.2. Relevant Development Plan Policy:

- Chapter 2 – Chapter 2 - Core Strategy and Settlement Strategy:

CS4: Active Land Management “Facilitate the re-use and regeneration of vacant sites and landbanks through various measures to promote compact urban growth in line with the Core Strategy”.

CS4 Objective 1: To implement the Vacant Site Levy for vacant development sites, as appropriate, in the County and to continue to make publicly available a register of vacant sites, as set out in the Urban Regeneration and Housing Act, 2015 (or any superseding Act).

CS4 Objective 2: To promote the delivery of residential development through active land management measures and a co-ordinated planned approach to developing appropriately zoned lands at key locations, including regeneration areas, vacant sites and under-utilised areas.

Number of sites added and or removed from the Vacant Sites Register or Residential Zoned Land Tax (RZLT), as appropriate and brought forward for development.

Source: SDCC Vacant Sites Register / HTF data and RZLT map”

- Chapter 6 – Housing:

Section 6.1 Housing Strategy and Interim Housing Need and Demand Assessment.

H1 Objective 8: “To promote the re-use of and reactivation of vacant units within our Urban Areas and pursue as soon as possible, through the application of the vacant site levy in accordance with the Urban Regeneration and Housing Act 2015, and through the implementation of the South Dublin Vacant Homes Strategy and Action Plan 2018-2021. The Council shall review and update this programme as deemed necessary and shall pursue the Compulsory Purchase of long-term vacant sites and units, where feasible”.

- Chapter 12 – Implementation and Monitoring:

Section 12.6.2 Vacant Site Levy – Residential and Regeneration Lands

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”.

5.0 Policy History

5.1. The following planning history is considered of relevance to the instance appeal.

- Ref. S99A/0198 – Permission granted by South Dublin County Council on 23rd July 1999 for erection of a dwelling and septic tank treatment.
- Ref. SD13A/0221 – Permission granted by South Dublin County Council on 18th February 2014 for demolition of dwelling and development of 44 residential units with a new entrance/exit into Mill Road.
- Ref SD13A/0221/EP: Extension of duration of permission granted by South Dublin County Council on 17th July 2018 until 17th July 2023.
- Ref. SD15A/0086 – Permission refused by South Dublin County Council on 28th May 2015 for modifications to the permission granted under Ref. SD13A/0221 to include demolition of "Somerton" (a habitable dwelling) to form a new vehicular access/egress point to serve the permitted development from Mill Road and the provision of a pedestrian only access point adjacent to No. 5 Mill Road in lieu of a vehicular access point previously permitted.

The reasons for refusal related to the delivery of residential development on the A1 zoned lands as set out by the Mill Road Action Area Plan which would materially contravene the zoning objective on the lands and to be contrary to the proper planning and sustainable development of the area; and if the development was permitted it would result in reduced permeability by reason of one vehicular access point off the Mill Road to serve the development.

5.2. There are previous VSL appeals pertaining to this site:

- SD/VS365 (ABP-308733-20) refers to an appeal by Jackie Cosgrave against section 18 Demand for Payment. The Board confirmed the demand for payment of vacant site levy as calculated by the planning authority.
- VSL Reg. Ref. 365 (ABP-303527-19) - refers to an appeal by Jackie Cosgrave against 7(3) Notice. The Board confirmed the entry on the Vacant Sites Register.

6.0 Planning Authority Decision

6.1. Register of Vacant Sites Report:

- 6.1.1. Register of Vacant Sites – Planning Report – date of report 18th December 2018 and site inspection dates 6th September 2016 and 30th October 2018. The report provides a detailed summary in relation to the applicants' submission, the housing need of the County and the suitability of the site for the provision of housing. It was recommended that the subject site is a vacant site which is suitable for residential development and therefore the site should be entered on the Vacant Sites Register in accordance with the provisions of the Urban Regeneration and Housing Act, 2015, as amended.
- 6.1.2. Vacant Site Register Site Inspection Report – date of assessment 30th October 2018. Vacant Site Register template completed with recommendation proposed for entry on the Vacant Sites Register (photographs attached to report).
- 6.1.3. **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

- 6.3. A Notice of Demand for Payment of Vacant Site Levy for the year 2019 under Section 15 of the Urban Regeneration and Housing Act was issued to Jackie Cosgrave on the 20th of October 2020 for the value of €126,000.00.
- 6.4. A Notice of Demand for Payment of Vacant Site Levy for the year 2020 under Section 15 of the Urban Regeneration and Housing Act was issued to Jackie Cosgrave on the 22nd of November 2021 for the value of €126,000.00.
- 6.5. 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 Jackie Cosgrave on the 24th of November 2022 for the value of €126,000.00.
- 6.6. 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 Jackie Cosgrave on the 9th of November 2023 for the value of €126,000.00.

- 6.7. 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 Jackie Cosgrave on the 28th of November 2024 for the value of €126,000.00.
- 6.8. A Notice of Determination of Market Value was issued to Jackie Cosgrave on the 16 October 2019 stating that the valuation placed on the site is €1,800,000 and instructions to make an appeal to the Valuations Tribunal.
- 6.8.1. A section 7(3) Notice issued on the 18 December 2018, advising the owner that their site had been placed on the register.
- 6.8.2. A section 7(1) Notice issued on the 31 October 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 landowners have submitted an appeal to the Board, against the decision of South Dublin County Council in respect to the Demand for Payment. The grounds of the appeal can be summarised as follows:
- The imposition of a vacant site levy is usually imposed on the owner of land that is within an area zoned for development and with services available and where the owner has made little or no effort to develop the lands.
 - The applicant has lodged over the last 10 years planning applications to develop the land but has been unable to obtain a permission that would permit a viable development of the lands.
 - It is inequitable to serve the applicant with a fine as the Council are now seeking to impose.
 - The Board is invited to examine the history of the planning applications on site and the conditions attached in respect to access, in particular.
 - The activity on adjoining lands led to difficulties with the viability of developing this land on its own.

- The owner is actively seeking to develop the site but is facing obstacles outside of her control. The levy would not serve its intended purpose as it would not address the barrier to development.
- The owner has demonstrated a clear intention to develop through attempting to gain planning permission.
- While the site may be serviced and zoned for development, a key principle of planning law is that it must be economically viable, if the only permission the Council are willing to grant would result in financially unviable developments, this renders the site undevelopable under current conditions.
- The application of a levy would further reduce the economic resources available for development.
- The Planning Authority's approach to permission is effectively sterilising the development potential of the site.
- There is an argument based on constitutional property rights – the combination of restrictive planning decisions and vacant site levy effectively prevents any economical viable use of the property and could amount to a de facto interference with property rights.
- There is a suggestion that there is a disconnect between planning policy and market reality.

7.2. Planning Authority Response

- 7.2.1. The Planning Authority responded the appeal on 28th January 2025. A detailed response has been provided to the appeal and a timeline of the process and procedures dating from 2019 – 2024 has been provided. The response references the Statutory Context and the Development Plan Policy, and the planning history.
- 7.2.2. Reference is made to the site inspection and the Notices issued to the site owner in respect of the lands. The Council consider that the Notice of Demand for payment of Vacant Site Levy for 2023 (with reminders for outstanding levy payments for 2019, 2020, 2021 and 2022) as issued by the Council 28th November 2024 in accordance with Section 15 of the Urban Regeneration and Housing Act 2015, as amended is appropriate and should be confirmed.

- 7.2.3. In conclusion, the Planning Authority requested that the demand for the payment of vacant sites levy as issued by the Council 28th November 2024 in accordance with Section 15 of the Urban Regeneration and Housing Act 2015, as amended in respect to the subject site at Mill Road, Saggart, Co. Dublin be confirmed by An Bord Pleanála.

8.0 Assessment

8.1. Introduction

- 8.1.1. The appeal on hand relates to a Section 15 Demand for Payment. As such the appeal will be assessed under the provisions of the Urban Regeneration and Housing Act 2015, as amended. 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- 308733-20 appeal against a section 18 Demand for Payment for the year 2020, and ABP-303527-19 appeal against 7 (3) Notice, 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 2018. 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 planning authority were correct to issue the demand for payment of the levy for 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 of the year concerned 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 23rd December 2024.
- 8.3.3. The appellants reference various permissions on site specifically planning ref: S99A/0198, planning ref: SD13A/0221 (extended under SD13A/0221/EP) and planning ref: SD15A/0086, which pertain to the overall landholding and states that the site owner has tried to develop these lands but was unable to obtain a permission that would permit a viable development of the lands.
- 8.3.4. 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".
- 8.3.5. Whilst I note previous planning permissions on site in particular planning ref: SD13A/0221 (extended under SD13A/0221/EP) for residential development, no commencement notices have been submitted or evidence provided as part of the appeal to indicate the dates on which construction activity has taken place on foot of this permission.
- 8.3.6. Furthermore, following my site visit, it is evident that no construction activity has taken place on foot of the previously granted permission on site. Therefore, I consider that the majority of the site has remained vacant. It is for this and other reasons that the site meets the criteria for inclusion on the VSR and the existence of an extant planning permission has no part to play in this instance.
- 8.3.7. The appellant refers to activity on adjoining lands which has led to difficulties with the viability of developing this land and obstacles outside of the site owner's control. While these statements are noted, no construction works have commenced on site,

and the site remains vacant in accordance with 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 meets all the criteria with reference to residential lands under section 5(1)(a) of the 2015 Act.

8.3.8. 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...”.

8.3.9. The site is zoned residential and as stated by the Planning Authority, there is a need for housing in the area. In addition, the site is suitable for the provision of housing as evidenced by the previously permitted development on site (now expired) and the residential land use zoning.

8.3.10. Given the foregoing, I conclude that the majority of the site is vacant or idle in accordance with Section 5(1)(a)(i)(ii) and (iii) and Section 18 (2) of the 2015 Act. The demand for payment of the vacant site levy under Section 15 of the Urban Regeneration and Housing Act 2015 is, therefore, confirmed.

8.3.11. In addition, the appellant references economic resources available to develop the lands, the financial viability of the lands, constitutional property rights of the applicant, the planning decisions on this site and suggests that there is a disconnect between planning policy and market reality pertaining to these lands. However, this does not qualify as criteria for omitting the lands from the register under the Urban Regeneration and Housing Act 2015, as amended.

8.4. Levy Calculation

8.4.1. A Notice of Determination of Market Value was issued to Jackie Cosgrove on the 16 October 2019 stating that the valuation placed on the site is €1,800,000. No evidence from the appellant has been submitted to show that this valuation was appealed to the Valuation Tribunal.

- 8.4.2. A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to Jackie Cosgrove on the 28th of November 2024 for the value of €126,000, for the year 2023 (subject of this appeal).
- 8.4.3. 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 2023. In accordance with Section 5(1)(a)(i)(ii) and (iii) and 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 the year 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 years concerned 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

20th February 2025