



An  
Coimisiún  
Pleanála

## Inspector's Report ACP-323970-25

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<b>Type of Appeal</b>	Appeal against a Section 18 Demand for Payment.
<b>Location</b>	Site at Carrignafoy, Cobh, Co. Cork.
<b>Planning Authority</b>	Cork County Council
<b>Planning Authority VSL Reg. Ref.</b>	VS-0097
<b>Site Owner</b>	Frank & Martin O'Mahony.
<b>Planning Authority Decision</b>	Demand Levy
<b>Inspector</b>	Jennifer McQuaid

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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 Cork County Council, stating their demand for a vacant site levy for the year 2024 amounting to €157,500 for vacant site at Carrignafoy, Cobh, Co. Cork and identified as VS-0097. The appeal site has two stated registered owner Frank O'Mahony and Martin O'Mahony.
- 1.2. Notices of Proposed Entry on the Vacant Sites Register was issued to Frank O'Mahony and Martin O'Mahony on 20th November 2020. On the 26th of February 2021 Notices of Entry on the Vacant Sites Register was issued to Frank O'Mahony and Martin O'Mahony. This section 7(3) notice was not appealed to the Commission.
- 1.3. A valuation pertaining to the site was issued by Cork County Council on the on the 18th of November 2021 to Frank O'Mahony and Martin O'Mahony. The value of the subject site is stated to be €2,250,000. This was not appealed to the Valuation Tribunal.
- 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 Frank O'Mahony and Martin O'Mahony on the 2nd of December 2022 for the value of €157,500. The appellants (Frank O'Mahony and Martin O'Mahony) appealed the Demand for Payment Notice issued pursuant to Section 15 of the Urban Regeneration and Housing Act (ABP 315407-22 refers, the Commission upheld the Notice).
- 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 Frank O'Mahony and Martin O'Mahony on the 6th of November 2023 for the value of €157,500. The appellants (Frank O'Mahony and Martin O'Mahony) appealed the Demand for Payment Notice issued pursuant to Section 15 of the Urban Regeneration and Housing Act (ABP 318608-24 refers, the Commission upheld the Notice) (currently under judicial review).
- 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 Frank O'Mahony and Martin O'Mahony on the 9th of October 2024 for the value of

€157,500. The appellants (Frank O'Mahony and Martin O'Mahony) appealed the Demand for Payment Notice issued pursuant to Section 15 of the Urban Regeneration and Housing Act (ABP 321113-24 refers, the Commission upheld the Notice (currently under judicial review).

- 1.7. A Notice of Demand for Payment of Vacant Site Levy for the year 2024 under Section 15 of the Urban Regeneration and Housing Act was issued to Frank O'Mahony and Martin O'Mahony on the 20th November 2025 for the value of €157,500.
- 1.8. The appellants ((Frank O'Mahony and Martin O'Mahony) appealed the Demand for Payment Notice issued pursuant to Section 15 of the Urban Regeneration and Housing Act, the subject of this current appeal.

## **2.0 Site Location and Description**

- 2.1. The portion of the lands identified as VS-0097 zoned residential have an area of c.5.2ha are located c.1.3 km to the north of Cobh town centre on the periphery of a built-up residential area. The site comprises a number of agricultural fields, with the College Manor residential estate bounding the site to the south, Cobh GAA grounds and a water tower located to the south-east, and agricultural lands to the north and west. The southern portion of the lands outlined under VS-0097 refers to lands zoned 'Green Infrastructure' and existing development and excluded for the purposes of VSL.

## **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) and 5(2) of the Act. Section 7(3) Notices were issued on the 26<sup>th</sup> of February 2021, and the site was subsequently entered onto the register on that date.

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 Commission 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. With effect from 6<sup>th</sup> June 2022 the Cork County Development Plan 2022 – 2028 replaced the 8 Municipal District Local Area Plans adopted in 2017, including the Cobh Municipal District LAP. Chapter 2 of Volume 4 of the Development Plan includes the Cobh Municipal District.
- 4.2. The northern portion of the lands are identified as VS 0097 which are the subject of the Demand for Payment Notice are zoned CH-R-11 Medium A Density Residential.
- 4.3. Parcel ID EX-RES-35869 on the RZLT file is zoned Existing Residential/Mixed Use and Other Uses and does not form part of the lands used to calculate the VS levy.

## 5.0 Planning History

### **RZLT:**

**PA Ref. DRZLT 473703749 (ABP Ref. 316368-23)** refers to an appeal under section 653J (1) of the Taxes Consolidation Act 1997, as amended, against the inclusion of land on the Residential Zoned Land Tax Map. Decision to remain on RZLT map.

### **VSL:**

**ABP ref 323970-25** refers to a subject section 18 appeal against Demand for Payment of VSL for 2024.

**ABP Ref 321113-24** refers to a section 18 appeal against Demand for Payment of VSL for 2023 (Determination issued 14<sup>th</sup> February 2025 & Demand confirmed)

**ABP Ref 318608-23** refers to a section 18 appeal against Demand for Payment of VSL for 2022 (Determination issued January 2025 & Demand Confirmed)

**ABP Ref 315407-22** refers to a section 18 appeal against Demand for Payment of VSL for 2021 (Determination issued February 2024 & Demand Confirmed)

**Planning Application:**

**PA Ref. 23/4526** refers to an application for 92 no. residential units and all associated site works. Comprises Phase 1 of a two-phase residential development. Granted with conditions on 30/10/2024.

## 6.0 **Planning Authority Decision**

### 6.1. **Register of Vacant Sites Report:**

There are no copies of site investigations, reports or photographs on the file.

### 6.2. **Planning Authority Notice**

A section 7(1) Notice issued on the 20<sup>th</sup> of November 2020 advising the owners that their site had been identified as a vacant site and invited submissions, accompanied by a site map.

A section 7(3) Notice issued on 26<sup>th</sup> February 2021 advising the owners that their site had been placed on the register.

A Notice of Determination of Market Value was issued to Frank O'Mahony and Martin O'Mahony on the 18<sup>th</sup> of November 2021 that the valuation placed on the site is € 2,250,000 and instructions to make an appeal to the Valuations Tribunal, accompanied by a map with the site outlined.

A Section 15 Demand for Payment Notice of 2021 Vacant Site Levy issued to Frank O'Mahony and Martin O'Mahony on the 2<sup>nd</sup> of December 2022 advising the owner that of the amount of €157,500 was due for the year 2021. ABP Ref 315407-22 Demand Confirmed.

A Section 15 Demand for Payment Notice of 2022 Vacant Site Levy issued to Frank O'Mahony and Martin O'Mahony on the 6<sup>th</sup> of November 2023 advising the owner that of the amount of €157,500 was due for the year 2022. (ABP 318608-23 Demand Confirmed).

A Section 15 Demand for Payment Notice of 2023 Vacant Site Levy issued to Frank O'Mahony and Martin O'Mahony on the 9<sup>th</sup> October 2024 advising the owner that of

the amount of €157,500 was due for the year 2023. (ABP-321113-24 Demand Confirmed, currently under Judicial Review).

## 7.0 The Appeal

### 7.1. Grounds of Appeal

The landowners have submitted an appeal to the Commission, against the Demand for Payment for the year 2024.

The grounds of the appeal can be summarised as follows:

- Case to remove site Ref. VS-0097 from the Council's Vacant Site Register.
  - The lands are registered with the Department of Agriculture, Food and Marine.
  - The site was zoned in 2017, and the applicant acquired their interest in the land prior to the zoning.
  - The lands are not vacant and idle and are being actively farmed and used as agriculture since 2000.
  - The wording of Section 5(1)(a)(iii) of the Urban Regeneration and Housing Act 2015 means that once a site is being used for agricultural purposes, it cannot be vacant or idle, and therefore it cannot be a vacant site, within the meaning of the Act.
  - In accordance with the decision of McGrath J in of Navartil v. An Bord Pleanála (2020) IEHC 292 the use of the land for agricultural purposes means that the land is not vacant or idle within the meaning of the Act.
  - Precedence under ABP-302747-18, the Commission concluded "the condition of the site, being that in use for agricultural purposes and that while the site is being used for a purpose that does not consist solely or primarily of the provision of housing of the development of the site for the purpose of such provision, the most recent purchase of the site occurred before it became residential land, and before, on or after the commencement of section 63 of the Planning and Development (Amendment) Act 2018. The Commission requested the Planning Authority to cancel the entry on the Vacant Sites register.

- The entry onto the vacant site register was not appealed as the landowner on the basis of an assurance from a servant or agent of the Local Authority that the levy would not be imposed.
- The majority of the 15.8ha of land identified under VS-0097 (folio CK32369) is neither zoned for residential development nor vacant.
- As the majority of the land is neither zoned for residential development nor vacant, the Council's valuation is flawed and should be considered null or void.
- There are undeveloped, zoned, sedimentary, residential lands located to the west which are in close proximity to the town centre and have not been included in the Council's VSR.
- The site is not suitable for the provision of housing due to the lack of infrastructural facilities.
- The Council's demand for payment of the VSL dated 2 December 2022 incorrectly refers to VS-0021, relates to lands in Carrigtwohill which is not owned by Frank or Martin O'Mahony.
- Incorrect boundary was identified for VS-0097.
- Section 14 of the 2015 Act should be invoked and a zero percent levy should be imposed in circumstances where the land is being actively developed, delays in planning application.
- The appellant has made efforts to develop the land. Planning permission granted on the 6<sup>th</sup> December 2024 and therefore inappropriate test applied and should be removed from the register. In securing planning permission there were a number of delays which were out of the applicant's control.
- The levy of €157,500 per year is a significant interference with the owner's constitutional rights to their property. The market value is overestimated.

## 7.2. Planning Authority Response

Response dated 28<sup>th</sup> January 2026; comments are summarised as follows:

- The Council's entry onto the VSR was not appealed by the landowners.

- It is noted that Permission has been granted for residential development and had not commenced in 2024.
- It is a condition of the planning permission for the applicant to enter into an agreement with Uisce Eireann for service connections to public water supply and/or wastewater collection network.
- The valuation of the lands and calculation of the levy is specifically restricted to the lands zoned residential as identified in the Cobh Municipal District Local Area Plan 2017.
- The subject site is currently zoned as CH-R-11 Medium A density residential development. Development of these lands shall include landscaping proposal and shall be accompanied and informed by a comprehensive Visual Impact Assessment Statement.
- The Market Valuation carried out in 2021 related to a plot with an area of c.5.2 hectares. Copy of valuation attached which notes based on a market value in the region of €175,000/acres, the Market Valuation of €2,250,000 was submitted to the Planning Authority in 2021 and not appealed at the time.
- At the time of writing the Planning
- Authority noted there was construction activity on site in 2025 and in accordance with section 10(2) of the Urban Regeneration and Housing Act 2015, as amended, this site is no longer deemed a vacant site and Cork County Council has cancelled this entry on its Register on the 19<sup>th</sup> December 2025.

### 7.3. Further responses

The applicant has made a further response in relation to the Planning Authorities submission. The following comments were received:

- There are two distinct judicial reviews underway 2025 363JR and 2025 384JR, which challenge the decisions of the Commission in respect of the appeals for the vacant site levies in respect of 2022 and 2023. Request no outcome on this current appeal until a judgement from the High Court is received.

- Appeal should be struck out as the site is no longer vacant and planning permission was secured for 99 residential units on the 5.2ha of the circa 10ha vacant site.
- Construction work commenced in early June 2025.
- Cork County Council determined that construction works were in train and cancelled the entry of the lands on the vacant site register on the 19<sup>th</sup> of December 2025.
- The applicant states as the site was no longer a vacant site on the 18<sup>th</sup> December 2025, the Commission is obliged, by the provisions of S.18 (3) to direct the cancellation of the levy.
- The lands were purchased in 2001, and the lands were zoned in 2017. The lands have been actively farmed.
- Photographs submitted confirming construction is underway.

## 8.0 **Assessment**

### 8.1. **Introduction**

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.

### 8.2. **The site is no longer vacant.**

The Commission 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 2024.

### 8.3. Is it a Vacant Site?

A Section 7(3) Notice of Entry on the Vacant Sites Register was issued on the 26<sup>th</sup> February 2021. No Section 9 appeal was made to the Commission. 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.

I note the lands are identified as Tier 1 in the Cork County Development Plan 2022-2028.

I note the appellant has made reference to McGrath J in of Navartil v. An Bord Pleanála (2020) IEHC 292. In this case, the Court determined that the proper interpretation of “vacant” was “empty or unoccupied” and “idle” took the meaning of being “not in use”. Here the lands were in use as a farm for agricultural purposes. The Court was of the view that land in use for a purpose other than that for which it is zoned, was not intended by the legislature to be captured by the words “vacant or idle”. And the local authority must ensure that at the time of the decision, either the public infrastructure is already in place or plans for the required public infrastructure have been approved and, in the pipeline, if the site is to be considered appropriate for housing within the meaning of the Act. A future intention, without the completion of certain statutory processes to develop a site, is not sufficient.

The appellants dispute that the site is not vacant at the time of appeal as the lands are currently under construction works which started in 2025. The Planning Authority have confirmed that construction works commenced in 2025 and have removed the subject site from the vacant site register.

In regard to public infrastructure, I note Uisce Eireann require upgrades to the water supply and wastewater infrastructure in the area and that water mains transverse the site and require diversion. I consider the subject site is served by public water and public wastewater and the upgrades required can be carried out as part of a development planning application reference 244072, conditions number 47, 48 and 49.

Based on the information submitted and the evidence presented by the Planning Authority I am satisfied that for the period concerned, 2024, the site remained a vacant site for the year 2024, however, the site is no longer vacant on the date the

appeal was made to An Coimisiún Pleanála as construction works are underway and these have been confirmed by the Planning Authority.

#### **8.4 Levy Calculation**

The appellants have submitted that lands are not zoned residential are included within the boundaries of VS-00097, the local authority in their submission dated 13<sup>th</sup> November 2024 on previous planning appeal ABP-321113-24 state the site identified as VS-0097 (folio reference CK32369) subject to the levy are specifically restricted to/based on the residential zoned lands as identified in the Cobh Municipal District Local Area Plan and the Draft Cork County Development Plan 2021.

I note the zoning has not changed in the current Cork County Development Plan 2022-2028.

It is possible that the procedures employed by the Planning Authority to value the site, could have formed the basis for an appeal to the Valuation Tribunal. The text contained in the notice, the methodology employed to value the site and the market value price assigned to the site are all matters that could have been reasonably assembled in an appeal to the Valuation Tribunal, with or without further correspondence from the Planning Authority after the section 12 notice was issued.

Though the appellant may feel they have a strong case to make in relation to the market value of the site. At the date of the valuation notification (18<sup>th</sup> November 2021), the landowners should have appealed directly to the Valuation Tribunal within 28 days. This has not happened and there is no record that the landowners at the time made an appeal to the Tribunal against a determination made by a Planning Authority. The scope of an appeal to the Valuation Tribunal is set out in detail at section 13 of the 2015 Act and this section of the Act was highlighted to the owner in the text of the section 12 Notice. In any case, unfortunately for the appellants, the Commission has no jurisdiction to adjudicate a determination of market value, which is for the Valuation Tribunal to do.

A valuation carried out in 2021 remains valid for the Levy due for 2022, 2023 & 2024 as section 12 sets out that a valuation is required to be carried out at least once every 3 years.

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 Frank O'Mahony and Martin O'Mahony on the 2<sup>nd</sup> December 2022 for the value of €157,500 for the year 2021 relating to lands identified as VS-0021, which refers to the current appeal before the Commission. 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.

The appellants submit that the Demand for Payment Notice should be cancelled as the first paragraphs referred to 'ref VS-0021 at Carrignafoy, Cobh, Co. Cork'. Under ABP 315407-22 it was acknowledged that VS-0021 referred to lands at Carrigtwohill and in different ownership. It was considered that this was a typographical error as the correspondence clearly identified the lands as VS-0097 in its subject matter and referred to the correct postal address which stated, 'ref VS-0021 at Carrignafoy, Cobh, Co. Cork'. Having regard to the foregoing it was therefore considered the Notices valid and as such the Demand for payment for the year 2021 was confirmed (ABP 315407-22 refers).

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 Frank O'Mahony and Martin O'Mahony on the 6<sup>th</sup> of November 2023 for the value of €157,500 for the year 2022 relating to lands identified as VS-0097. 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 and as such the Demand for payment for the year 2022 was confirmed (ABP 318608-23 refers).

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 Frank O'Mahony and Martin O'Mahony on the 9<sup>th</sup> October 2024 for the value of € 157,500 for the year 2023 relating to lands identified as VS-0097. 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 and as such the Demand for payment for the year 2023 was confirmed (ABP 321113-24 refers).

It is submitted that the valuation is incorrect as the majority of the lands identified as VS 0097 are not zoned residential nor considered vacant. The Planning Authority note that the valuation is based on a site area of 5.2ha which corresponds with the residential zoned lands and therefore is correct.

The Council valued the site in 2021, the Local Authority is required to revalue once at least every three years thereafter.

I note that the appellant highlighted that the VSR updated on the 7th of November 2023 while including text for the appeal site did not have a map uploaded. The PA in correspondence received by ABP on the 20th of December 2023 for appeal ABP-318608-23 acknowledged that the map had been temporarily removed from the website in error but was restored on the 13th of December 2023. I note this issue but am satisfied that the technical issue did not render the demand for payment invalid as the maps remains the same and the applicant was clearly informed that a Levy was due for the lands identified as VS-0097 referred to the lands entered on the VSL.

I further note that construction works have commenced on site in the year 2025 and this is acknowledged by the appellant and by the Planning Authority and as such the in accordance with section 10(2) of the Urban Regeneration and Housing Act 2015, as amended, this site is no longer deemed a vacant site and Cork County Council has cancelled this entry on its Register on the 19<sup>th</sup> December 2025.

## 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 Commission should confirm that the site was a vacant site as of the 1 of January 2024 and was a no longer vacant site on 18<sup>th</sup> December 2025, 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 Commission 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, cancelled.

## 10.0 Reasons and Considerations

### 10.1. Having regard to:

- (a) The information placed before the Commission 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, the site is suitable for the provision of housing as demonstrated by the residential land use zoning for the area,
- (e) That the majority of the site is no longer vacant on the date of the appeal,
- (f) The amount of the levy has been correctly calculated at 7% of the site value in 2024,
- (g) There has been no change in the ownership of the site during the period concerned, 2024, the Commission is satisfied that the site was a vacant site on the 1<sup>st</sup> of January 2024 and was no longer vacant site on 18<sup>th</sup> December 2025, the date on which the appeal was made 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, cancelled.

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.

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Jennifer McQuaid  
Planning Inspector

16<sup>th</sup> March 2026