



An
Bord
Pleanála

Inspector's Report ABP-319576-24

Type of Appeal

Appeal against a Section 18 Demand for Payment.

Location

Lands at Ferns Bridge, Canal Harbour, Monasterevin.

Planning Authority

Kildare County Council

Planning Authority VSL Reg. Ref.

VS MON-02

Site Owner

Masonbrook Holdings Ltd.

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 8th of April 2024, stating their demand for a vacant site levy for the years 2021, 2022 and 2023 amounting to €178,500.00 for vacant site at Lands at Ferns Bridge, Canal Harbour, Monasterevin, Co. Kildare and identified as VS MON-02. The appeal site has one stated registered owner Masonbrook Holdings Limited.
- 1.2. A Section 15 Notice of Demand for Payment of Vacant Site Levy was issued by Kildare County Council, stating their demand for a vacant site levy for the year 2020 amounting to €59,500 for vacant site lands located at Ferns Bridge, Canal Harbour, Monasterevin, Co. Kildare was issued to Masonbrook Holdings and dated 16 August 2022. 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-314596-22. 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 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,
- (e) The site had not yet stood on the register as of the 1 January 2020, the payment of the Vacant Site levy in arrears cannot be correctly calculated in accordance with section 15(3) of the Urban Regeneration and Housing Act 2015 (as amended).

The Board considered that in accordance with Section 18(4) of the Urban Regeneration and Housing Act 2015 (as amended), the Board has determined that the amount of the levy has been incorrectly calculated in respect of the vacant site and the amount charged by the planning authority was not in accordance with Section 15(3) of the Urban Regeneration and Housing Act 2015 (as amended), the amount of vacant site levy to be charged in respect of the site for the year 2020,

shall be zero. The Board considered that it is appropriate that a notice be issued to the planning authority who shall amend the demand made in respect of the year 2020 in accordance with the revised amount (zero) but shall retain the entry on the Vacant Sites Register.

- 1.3. A Notice of Proposed Entry on the Vacant Sites Register was issued Masonbrook Holdings Limited on the 4 November 2020. On the 21 December 2020, the Notice of Entry on the Vacant Sites Register was issued to Masonbrook Holdings.
- 1.4. A valuation pertaining to the site was issued by Kildare County Council on the 20th of August 2021 to Masonbrook Holdings Limited. The value of the subject site is stated to be €850,000.00 (Eight Hundred and Fifty Thousand Euro). This section 7(3) notice was not appealed to the Board.
- 1.5. 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 Masonbrook Holdings Limited on the 8th of April 2024 for the value of €59,500.00.
- 1.6. 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 Masonbrook Holdings Limited on the 8th of April 2024 for the value of €59,500.00.
- 1.7. 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 Masonbrook Holdings Limited on the 8th of April 2024 for the value of €59,500.00.
- 1.8. The appellant (Masonbrook Holdings Limited) has appealed the Demand for Payment Notice issued pursuant to Section 15 of the Urban Regeneration and Housing Act, for the years 2021, 2022, and 2023, under which forms the current appeal before the Board.

2.0 Site Location and Description

- 2.1. The site is located within Monasterevin Town, adjacent to the train station. Canal Harbour Road runs along the western boundary of the site, the railway along the south and the remainder of the boundaries back on to existing housing estates at Ferns Avenue. The site appears to be level, and construction was ongoing at time of

my inspection. An access laneway bisects the site and provides a more direct pedestrian and cyclist access from Ferns Avenue to town to the south.

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 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. The Kildare County Development Plan 2023 – 2029 was adopted on the 9th of December 2022 and came into effect on the 28th of January 2023. Monasterevin is listed as one of the Self Sustaining Towns within ‘Table 2.7 - Settlement Hierarchy and Typology County Kildare.’ The town is also listed as a Level 3 settlement in ‘Table 8.1 – Retail Hierarchy for County Kildare.’

4.1.2. 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”.

Under UD A3 Monasterevin is listed as one of the urban centres for Kildare County Council to ‘Prepare and implement on a phased basis Town/ Village Renewal Masterplans.

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”.*

4.1.3. **Monasterevin Local Area Plan 2016 – 2022:**

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

4.1.5. Under the Local Area Plan 2016 – 2022, as extended, the site is part of lands designated zoning objective C (New Residential) i.e. C7 lands as per Land Use Zoning Map 1 (drawing no: 200/15/691).

4.1.6. Relevant Sections:

- Section 6.12.4 ‘Dereliction’ – Dereliction – Policies *“It is the policy of the Council to: DT 1: To survey derelict or vacant sites and to encourage and facilitate the re-use and regeneration of derelict land/ buildings in Monasterevin 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 ref: 21/1729 – permission for 77 dwellings.
- PA ref: 15/1104 – permission for 2 houses.
- PA ref: 15/1041 – permission for 6 houses.
- PA ref: 14/45 – revisions to house types.
- PA ref: 10/550 - permission granted to extend 04/2851.
- PA ref: 07/715 – revisions to layout.
- PA ref: 07/407 – permission for change of house types.
- PA ref: 04/2851 – permission for 466 houses.

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

- PA Ref VS/MON-02 (ABP 314596-22) refers to an appeal by Masonbrook Holdings against as section 18 Demand for Payment. The Board determined that the amount of the levy has been incorrectly calculated in respect of the

vacant site and the amount charged by the planning authority was not in accordance with Section 15(3) of the Urban Regeneration and Housing Act 2015 (as amended), the amount of vacant site levy to be charged in respect of the site for the year 2020, shall be zero, but the site shall retain the entry on the Vacant Sites Register.

- MON 02 Site is on the Vacant Site Register.

6.0 Planning Authority Decision

6.1. Register of Vacant Sites Report:

- 6.1.1. Report – site inspection date 26th March 2020. Site under grass, a pedestrian path crosses the site, overall site not in use. Site is zoned residential. Site visits 26 March 2020 and 24 October 2018.
- 6.1.2. Second Report 17th December 2020. Submission received, in order to develop the site more sustainably a greater number of dwellings than that allowed for in the development plan is required and could be refused permission. The Planning Authority note the submission, but the site fulfils the criteria for a vacant site and should be placed on the register.
- 6.1.3. Third Report 17th May 2022 file. The site was inspected on 16th May 2022, construction activity was occurring on the subject site and houses have been developed/currently occupied on the subject site. This report related to land parcel indicated as C on the map within the planners' report.
- 6.1.4. **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 Demand for Payment of Vacant Site Levy for the year 2021 under Section 15 of the Urban Regeneration and Housing Act was issued to Masonbrook Holdings Limited on the 8th of April 2024 for the value of €59,500.00.

- 6.2.2. 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 Masonbrook Holdings Limited on the 8th of April 2024 for the value of €59,500.00.
- 6.2.3. 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 Masonbrook Holdings Limited on the 8th of April 2024 for the value of €59,500.00.
- 6.2.4. This amounts to a total outstanding levy due of €178,500.00, 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 subject lands forms part of a larger landholding which is not currently vacant.
 - The subject lands have been partly developed to date.
 - Permission has been granted for housing on the subject lands, which is currently under construction under planning ref. 21/1729 for 71 no. dwellings and a creche.

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 314596-22 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 2021, 2022 and 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 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 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 22nd April 2024.

8.3.3. The appellants reference various permissions on site specifically planning ref: 21/1729, planning ref: 19/997 and planning ref: 04/2851 which pertain to the overall landholding.

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 and the most recent planning application (21/1729) 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. Notwithstanding, following my site visit, whilst construction activity is taking place, and the information provided within the appeal, I consider that the majority of the site 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 an access footpath, which was also referenced under the appeal submitted under Ref: ABP-314596-22, i.e. access from Ferns Avenue to Canal Harbour. While I concur that these statements are factually correct, I concur with the previous inspectors' report that these works only very small proportion of the site 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.
- 8.3.8. 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..."
- 8.4. 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 an extant planning permission and the residential land use zoning. 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.

8.5. Levy Calculation

- 8.5.1. A valuation pertaining to the site was issued by Kildare County Council on the 20th of August 2021 to Masonbrook Holding Limited. The value of the subject site is stated to be €850,000.00 (Eight Hundred and Fifty Thousand Euro). No evidence from the appellant has been submitted to show that this valuation was appealed to the Valuation Tribunal.
- 8.5.2. 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 Masonbrook Holdings Limited on the 8th of April 2024 for the value of €59,500.00.
- 8.5.3. 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 Masonbrook Holdings Limited on the 8th of April 2024 for the value of €59,500.00.
- 8.5.4. 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 Masonbrook Holdings Limited on the 8th of April 2024 for the value of €59,500.00.
- 8.5.5. This amounts to a total outstanding levy due of €178,500.00, 7% of the market value.
- 8.5.6. 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 years 2021, 2022 and 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 years 2021, 2022 and 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 2021, 2022 and 2023,
- (g) There has been no change in the ownership of the site during the period concerned, 2021, 2022 and 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

13th February 2025