



An
Bord
Pleanála

Inspector's Report ABP-319882-24

Type of Appeal

Appeal against a Section 18 Demand for Payment.

Location

Site at Rockshire Road, Ballyrobin, Ferrybank, Co. Kilkenny

Planning Authority

Kilkenny County Council

Planning Authority VSL Reg. Ref.

VSR18-23

Site Owner

Digital Wren RE Limited.

Date of Site Inspection

19th November 2024

Inspector

Jennifer McQuaid

1.0 Introduction

This appeal refers to a Section 15 Notice of Demand for Payment of Vacant Site Levy issued by Kilkenny County Council, stating their demand for a vacant site levy for the year 2023 amounting to €16,800 for vacant site at Rockshire Road, Ballyrobin, Ferrybank, Co. Kilkenny and identified as VSR18-23. The appeal site has one stated registered owner Digital Wren RE Limited.

A Notice of Proposed Entry on the Vacant Sites Register was issued to Meadowcourt Homes Limited on 3rd November 2017. On the 7th December 2017, the Notice of Entry on the Vacant Sites Register was issued to Meadowcourt Homes Limited. This section 7(3) notice was appealed to the Board under reference ABP-300621-18. 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 Inspector.
- (d) The need for housing, that the site is suitable for the provision of housing and that insufficient reason is put forward to cancel entry on the Vacant Sites Register,

The Board is satisfied that the site was vacant or idle for the relevant period.

A Section 12(4) Notice of Determination of Market Value pertaining to the site was issued by Kilkenny County Council on 22nd May 2018 to Meadowcourt Homes Ltd. The value of the subject site is stated to be €200,000.00.

A Section 12(4) Notice of Determination of Market Value pertaining to the site was issued by Kilkenny County Council on 26th April 2021 to Meadowcourt Homes Ltd. The value of the subject site is stated to be €240,000.00.

Payments were received for 2018, 2019, 2020. There was a change of ownership in 2022; so, the levy is 0% for 2021 and 2022.

A Section 12(4) Notice of Determination of Market Value pertaining to the site was issued by Kilkenny County Council on 26th April 2024 to Digital Wren RE Limited. The value of the subject site is stated to be €375,000.00.

A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to Digital Wren RE Limited on the 14th May 2024 for the value of €16,800.00 for 2023, 7% of market value. The appellant (Digital Wren RE Limited) appealed the Demand for Payment Notice issued pursuant to Section 15 of the Urban Regeneration and Housing Act under which forms the current appeal before the Board.

2.0 Site Location and Description

The site with a stated area of c. 0.9ha is located north of The Beeches, a housing estate at the outer edge of Ferrybank, a suburb of Waterford City in County Kilkenny. The subject lands adjoin the existing housing “Beeches” estate and bound Berkeley Road to the west.

The lands comprise the remnants of a compound that would have served the construction of development at The Beeches and Berkeley Drive to the south. There is a small amount of construction material and some construction machinery on the site, including a portacabin, fencing equipment, tanks and blocks. The site slopes upwards from the road. The site boundaries include concrete block walls to the adjacent housing estate, construction hoarding to the road and wire mesh fencing to an access road to agricultural land to the east.

3.0 Statutory Context

3.1. Urban Regeneration and Housing Act 2015 (as amended).

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. A section 7(3) Notice was issued 7th December 2017, 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 Board within 28 days. The burden of showing that:

*(a) the site was no longer a vacant site on 1st January in the year concerned,
or*

*(b) the amount of the levy has been incorrectly calculated in respect of the site
by the Planning Authority,*

is on the owner of the site.

4.0 Development Plan

The relevant plan is Kilkenny County Development Plan 2021-2027.

Section 4.3.2 refers to Waterford MASP (Ferrybank/Belview)

Objective 4I To commence the review of the Ferrybank/Belview Local Area Plan within 6 months of the coming into effect of this Plan having regard to the MASP and to incorporate into the Kilkenny City & County Development Plan by way of variation.

Section 6.6 refers to Vacant Site Levy

Objectives 6C To promote the redevelopment and renewal of areas identified having regard to the core strategy, which need regeneration, in order to prevent –

- (i) Adverse effects on existing amenities in such areas, in particular as a result of the ruinous or neglected condition of any land,

- (ii) Urban blight and decay,
- (iii) Anti-social behaviour, or
- (iv) A shortage of habitable houses or of land suitable for residential use or a mixture of residential and other uses.

The levy may be applied to all identified “Regeneration” land and “Residential” land in existing land use zonings. Land in the residential category must be served by the public infrastructure and facilities to enable housing to be provided and serviced. In particular, the areas covered by the following zoning objectives are considered to constitute regeneration land:

- General Business
- Mixed Use
- Urban Village
- Business, Industry and Technology Parks/Business Park
- Community Facilities

Other regeneration zonings may be identified in relevant Local Area Plans.

Objective 6D To identify vacant sites where appropriate zoning applies and maintain a Vacant Sites Register in the plan area for the purpose of the Vacant Sites Levy.

Ferrybank Belview LAP 2017.

The site is zoned as Residential R3, this zoning allows for new residential development and other services incidental to residential development and reflects the densities which exist in existing housing developments at these locations. While housing is the primary use in this zone, childcare facilities and recreation will also be considered.

A Pedestrian Linkage Objective (PL1) crosses part of the site.

Section 4.5 Vacant Sites Levy

The Urban Regeneration and Housing Act 2015 introduced a Vacant Sites Levy as a site activation measure to ensure that vacant or underutilised land in urban areas is brought into beneficial use. This Plan will promote, encourage and facilitate the

appropriate development of sites and areas in need of development and renewal in order to prevent:

- Adverse effects on existing amenities in such areas, in particular as a result of the ruinous or neglected condition of any land.
- Urban blight or decay
- Anti-social behaviour, or
- A shortage of habitable houses or of land suitable for residential use or a mixture of residential and other uses.

The levy can be applied to land designated as either “residential” or “regeneration”. For the purposes of implementing the levy, the following zones are designated:

Residential: Residential Arcadian, Residential Low Density, Residential, Protect and Enhance Existing Residential Amenity.

Regeneration: Urban Village, Business Industry and Technology Parks.

These zones will be examined to determine if there are sites where the Vacant Site Levy is applicable under the provisions of Urban Housing and Regeneration Act 2015 and all associated regulations and guidance.

5.0 Planning History

There was a previous VSL appeals pertaining to this site:

ABP:300621-18 (VSL Reg. Ref. ID 201) refers to an appeal by Meadowcourt Homes Limited against a Section 18 Demand for Payment. The Board determined that the site was a vacant site within the meaning of the Act, and the amount of the levy has been correctly calculated in respect of the vacant site. The Board considered it appropriate that a notice be issued to the planning authority who shall confirm the demand for payment.

ABP-318813-24 (PA Reference 23117): Permission requested for construction of 35no. residential units and associated works. No decision to date.

21574: Permission granted to carry out site development works.

20529: Extension of duration refused.

18289: Permission granted for modifications.

15225: Permission granted to carry out site development works.

14185: Extension of Duration permitted for 05217, 071929 & 10178.

10178: Extension of Duration permitted for 05217 & 071929.

071929: Permission granted for alterations to the site layout.

05217: Permission granted for construction of 80 houses and associated works.

6.0 Planning Authority Decision

6.1. Register of Vacant Sites Report:

An Assessment for Vacant Sites Register Report (4th December 2018) following receipt of a submission under Section 7(2) was completed. The assessment highlights the site has been vacant for 12 months, it is over 0.05ha, it is zoned residential and located in an area where there is a need for housing. The majority of the site is noted as vacant or idle.

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:

A Notice of Proposed Entry on the Vacant Sites Register was issued to Meadowcourt Homes Limited on 3rd November 2017 under Section 7(1) of the Urban Regeneration and Housing Act 2015.

On 4th December 2017, an assessment for Vacant Sites Register was made following receipt of a submission under Section 7(2) of the Urban Regeneration and Housing Act 2015. It was recommended to enter the site on the Vacant Sites Register and give written notice to the owner under Section 7(3). This was signed by the Executive Planner and Senior Planner of Kilkenny County Council.

On the 7th December 2017, the Notice of Entry on the Vacant Sites Register was issued to Meadowcourt Homes Limited. This section 7(3) notice was appealed to the Board under reference ABP-300621-18. It was determined that the site was vacant and idle for the relevant period.

A Section 12(4) Notice of Determination of Market Value pertaining to the site was issued by Kilkenny County Council on 22nd May 2018 to Meadowcourt Homes Ltd. The value of the subject site is stated to be €200,000.00.

A Section 12(4) Notice of Determination of Market Value pertaining to the site was issued by Kilkenny County Council on 26th April 2021 to Meadowcourt Homes Ltd. The value of the subject site is stated to be €240,000.00.

Payments were received for 2018, 2019, 2020. There was a change of ownership in 2022; so, the levy is 0% for 2021 and 2022.

A Section 12(4) Notice of Determination of Market Value pertaining to the site was issued by Kilkenny County Council on 26th April 2024 to Digital Wren RE Limited. The value of the subject site is stated to be €375,000.00.

A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to Digital Wren RE Limited on the 14th May 2024 for the value of €16,800.00 for 2023, 7% of market value.

7.0 The Appeal

7.1. Grounds of Appeal

The landowner has submitted an appeal to the Board, against the decision of Kilkenny County Council against the Demand for Payment. The grounds of the appeal can be summarised as follows:

- Landowner is actively and expeditiously trying to have the site developed since 2023.
- Preplanning carried out on 10th June 2022 to discuss the proposals for the site.
- Planning application lodged on 24th April 2023 (PA reg: 23100) which was deemed incomplete.
- Planning application lodged on 11th May 2023 (PA Reg: 23117) and deemed valid on 16th May 2023.
- Further information requested on 4th July 2023 and response submitted on 11th November 2023. Notification to Grant was issued on 7th December 2023.
- Appeal (ABP-318813-24) to permitted development (PA Reg: 23117) was submitted on 9th January 2024. No decision to date received from An Bord Pleanála.

Documentation submitted with the appeal includes:

- A copy of letter of demand for payment dated 14th May 2024.
- A copy of email of preplanning notes & correspondence dated 7th June 2022 to 20th July 2022.
- Copy of letter from Kilkenny County Council stating planning reference 23117 is valid.
- Copy of further information request letter for planning reference 23117 dated 4th July 2023.
- Copy of letter from Kilkenny County Council stating further information response received on 14th November 2023.

- Copy of letter from Kilkenny County Council Notification of Decision to Grant permission for planning reference 23117 on 7th December 2023.
- Copy of letter from An Bord Pleanála stating planning reference 23117 has been appealed (Reference: ABP-318813-24) and the applicant can make submission or observation dated 10th January 2024.
- Copy of letter from An Bord Pleanála to observer in relation to appeal for planning application 23117 (ABP-318813-24) dated 6th February 2024.

7.2.Planning Authority Response

The Planning Authority responded on 8th July 2024 and have made the following comments:

- The entry for this site was appealed to the Board in January 2018, ABP-300621-18 and the entry was upheld.
- Since 2018, there have been a number of planning application, but all remain inactive.
- There was a qualifying change in ownership on the site, resulting in zero percent levy for 2022 and 2021. The site was vacant for all of 2023.
- The site identified is vacant in the context of the Urban Regeneration Act 2015, is serviced and is within the urban area of Ferrybank as a suburb of Waterford City within County Kilkenny.

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 levy has been incorrectly calculated in respect of the site by the Planning Authority.

I draw the Boards attention to the Planning History associated with this site and ABP 300621-18 appeals against a section 18 Demand for Payment for the years 2018.

8.2. The site is no longer vacant.

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?

An appeal under section 9 of the Act, requires that the burden of showing that the site or a majority of the site was not vacant or idle for the 12 months preceding the date of entry on the Register is on the owner of the site. Section 9(3) of the Act states that the Board shall determine whether the site was vacant or idle for the duration of the 12 months concerned or was not longer a vacant site on the date on which the site was entered on the register. The subject site was entered onto the Kilkenny County Council VSR on the 7th December 2017.

By reference to the Planning Authority notice, it is stated that the subject site comprises residential land for the purposes to the Vacant Site Levy. The subject site is located in an area zoned R3 – Residential in the Ferrybank Belview LAP 2017. Section 4.5 of the LAP sets out to promote the redevelopment and renewal of areas that are in need of regeneration, in order to prevent a combination of impacts including a shortage of habitable houses or of land suitable for residential use or a mixture of residential and other uses. This assessment takes into account the characteristics of the site in the context of Section 5(1)(a) residential land.

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.

Whilst I note previous planning permissions on site and currently planning application (ABP-318813-24) for residential development, no construction activity has taken place on the site. 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.

The Council note the condition of the site, and no activity has taken place, and this was confirmed on the date of my site visit. The site has no discernible use at present. The site is bound by hoarding, with poor site boundaries, no construction work on site, or ongoing construction activity. Taking all these matters into account and having regard to the Planning Authority's observations; the site is vacant or idle and has been for the relevant period.

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) of the 2015 Act. I am satisfied that the entry of the subject site on the Vacant Sites Register of Kilkenny County Council should be confirmed.

8.4. Levy Calculation

A Notice of Determination of Market Value was issued to Digital Wren RE Limited on the 26th April 2024 with a value of €375,000. Previously, on the 26th April 2021, the value was determined as €240,000. The applicant is being invoiced for 2023 based on the valuation of €240,000. The appellants argues that the applicant is actively seeking planning permission and should not be required to make a payment for 2023.

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 appellant has not queried the calculation of the levy and it is clear that the simple calculation of the levy demanded is correct.

9.0 Recommendation

I recommend that, in accordance with section 9(5) of the Urban Regeneration and Housing Act 2015, the Board should confirm that the site at Rockshire Road, Ballyrobin, Ferrybank, Co. Kilkenny was vacant or idle for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 7th December 2018 shall be deemed to have effect and applied for the year 2023.

In accordance with Section 18(4) of the Urban Regeneration and Housing Act 2015(as amended), the Board confirm that the amount of the levy has been correctly calculated in respect of the vacant site. The demand for payment of the vacant site levy under Section 15 of the Urban Regeneration and Housing Act 2015, is therefore, confirmed.

10.0 Reasons and Considerations

Having regard to:

- (a) The information placed before the Board by the Planning Authority in relation to the entry of the site on the Vacant Sites Register,
- (b) The grounds of appeal submitted by the appellant,
- (c) The report of the Planning Inspector,
- (d) The need for housing, that the site is suitable for the provision of housing and that insufficient reason is put forward to cancel entry on the Vacant Sites Register, the Board is satisfied that the site was vacant or idle for the relevant period.

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.

Jennifer McQuaid

Planning Inspector

20th November 2024