



An
Bord
Pleanála

Inspector's Report ABP-321113-24

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

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1.0 Introduction

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 2023 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.

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 Board.

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.

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 Board upheld the Notice).

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 Board upheld the Notice).

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 and this forms the current appeal before the Board.

2.0 Site Location and Description

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 26th 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 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 Policy

- 4.1. With effect from 6th 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.

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.

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 321113-24 refers to a current section 18 appeal against Demand for Payment of VSL for 2023

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**6.3. Planning Authority Notices:**

A section 7(1) Notice issued on the 20th 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 26th 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 18th 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 2nd 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 6th 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 advising the owner that of the amount of €157,500 was due for the year 2023. Current appeal before the Board.

7.0 The Appeal

7.1. Grounds of Appeal

The landowners have submitted an appeal to the Board, against the Demand for Payment for the year 2023.

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 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 *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.
 - 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. Request the Board to have particular regard to this inconsistency when considering this appeal.
- The site is not suitable for the provision of housing due to the lack of infrastructural facilities.
- The applicant acquired their interest in the land prior to the land being zoned as residential land.
- 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.
- The appellant has made efforts to develop the land but due to matters outside their control, the plans haven't progressed. Planning permission sought.
- The appellant commenced taking active steps to develop the land well in advance of the date of the notice of the proposed entry on the vacant sites register.
- No incentive was required in order for the owners to bring forward reasonable proposals for the development or reuse of the property in line with the development plan.
- The levy of €157,500 per year is a significant interference with the owner's constitutional rights to their property.

7.2. Planning Authority Response

Response dated 13th November 2024; comments are summarised as follows:

- The appeal relates only to the Levy demand issued under section 18 of the Act.
- The Council's entry onto the VSR was not appealed by the landowners.
- 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 and the Draft Cork County Development Plan 2021, which have a site area of c.5.2ha. Policy Objective CH-R-11 Medium a Density Residential.
- 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.
- At the time of writing the PA noted there was an active planning application on the subject lands under ref. 23/4526 which was granted with conditions on 30/10/2024.
- Development has not yet commenced. Hence for the purpose of the Vacant Site Levy, the lands are correctly considered vacant.

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 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?

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

The appellants dispute that the site continues to be vacant at the time of appeal as the lands are currently farmed. Based on the information presented, the applicant has submitted details of EU farm payments dating from 2005 to 2023.

I note the appellant has made reference to McGrath J in *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.

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.

I further note the lands are identified as Tier 1 in the current County Development Plan and an application for a residential development was permitted under PA Ref. 23/4526 on 30th October 2024.

Based on the information submitted and the evidence presented by the planning authority I am satisfied that for the period concerned, 2023, the site remained a vacant site.

I note ABP 315407-22 that the Board issued a Determination on the 7th of February 2024 confirming the Demand for Payment for Levy due for the year 2021.

I note ABP 318608-23 that the Board issued a Determination on the 22nd of January 2025 confirming the Demand for Payment for Levy due for the year 2022.

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 13th November 2024 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 (18th 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 Board 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 (Demand issued in 2023) 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 2nd 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 Board. 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 6th 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).

It is submitted that the Notices are null and void as the wrong period is referenced. The PA in correspondence received by An Bord Pleanála on the 20th December 2023 for appeal ABP-318608-23 acknowledge that there was a typo in the main body of the Notice but that the heading clearly stated 'Demand for payment for Vacant Site Levy for the 2022 period' and furthermore the first paragraph also referred to the year 2022. I am satisfied the Notices are valid and that it was clear that the Notice refer to a Demand for Payment for VSL for the year 2022 & 2023.

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 PA note that the valuation is based on a site area of 5.2ha which corresponds with e residential zoned lands and therefore is correct.

The Council valued the site in 2021, the LA 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.

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 as of the 1 of January 2023 and was a vacant site on 23rd October 2024, 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 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

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,
- (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 on the 1st of January 2023 and was a vacant site on 23rd October 2024, 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, 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.

Jennifer McQuaid
Planning Inspector

4th February 2025