



## VACANT SITE LEVY – BRIEFING NOTE

### Urban Regeneration and Housing Act 2015

The Urban Regeneration and Housing Act 2015

<http://www.irishstatutebook.ie/eli/2015/act/33/enacted/en/html> (as amended by the Planning and Development (Amendment) Act 2018

<http://www.irishstatutebook.ie/eli/2018/act/16/enacted/en/html>) ('the Act') and, in particular, Part 2 commenced on 1 September 2015.

Part 2 of the Act and in particular Section 6 therein provides for the establishment and maintenance of a register of vacant sites ('the register') by each individual planning authority beginning 1 January 2017.

A vacant site is defined as either

- 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,
  - 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, provided that the most recent purchase of the site occurred –
      - A. after it became residential land, and
      - B. before, on or after the commencement of section 63 of the Planning and Development (Amendment) Act 2018

or

- b) in the case of a site consisting of regeneration land –
  - i. the site, or the majority of the site, is vacant or idle, and
  - ii. the site being vacant or idle has adverse effects on existing amenities or reduces the amenity provided by existing public infrastructure and facilities (within the meaning of section 48 of the Planning and Development Act, 2000) <http://www.irishstatutebook.ie/eli/2000/act/30/section/48/enacted/en/html> in the area in which the site is situated or has adverse effects on the character of the area.

"Site" means any area of land exceeding 0.05 hectares identified by a planning authority in its functional area but does not include any structure that is a person's home. To be entered

onto the register, the planning authority must form the opinion that the property was a vacant site for the duration of 12 preceding months.

The Act provides that *“there shall be charged and levied for each year (beginning with 2018) in respect of each vacant site in relation to which a market value has been determined....and that stands entered on the register a levy to be known as vacant site levy.”*

The levy is payable in arrears each year beginning in 2019 by the owner of a vacant site that stands entered on the register on 1 January of that year to the planning authority in whose functional area the vacant site is located. It is payable on demand and there is provision for it to be paid in instalments.

The Act prescribes the rate of the levy. It was 3 per cent for 2018 and in respect of 2019 and every subsequent year thereafter, be such amount as is equal to: -

- i. 7 per cent, or
- ii. Such other percentage (not exceeding 7 per cent) as may stand prescribed, for the time being, by regulations,

of the market value of the vacant site determined by the planning authority in accordance with section 12 of the Act.

The owner of the site who receives a demand for payment of the levy can appeal the demand to An Bórd Pleanála.

**Section 19 provides that where the levy for a year is due and owing, the amount of vacant site levy shall on the day on which it becomes so due and payable, become and shall remain until payment thereof, a charge on the land concerned.**

Attention is drawn to Section 21 of the Act. Section 21(2) provides where a planning authority receives payment in full of a vacant site levy, it shall, on application to it in writing by or on behalf of the owner of the site concerned, within 14 days of the application, give the owner a certificate (“certificate of discharge”) confirming that vacant site levy in respect of the year concerned has been paid. From enquiries made to date the practice of the local authorities has been to issue receipts only on receipt of payment and to issue certificates of discharge only where same are applied for in writing by the owner of the vacant site.

Section 21(3) compels the vendor of a vacant site entered on the register to pay any levy due before the completion of the sale of the site. Section 21(4) further compels such a vendor to give its purchaser a certificate of discharge for each year in respect of which the site was a vacant site.

Section 17 of the Act provides that *“where in any year there is a change in ownership of a vacant site the amount of vacant site levy to be charged in respect of that site for that year, and for the preceding year, shall be zero”.*

The interaction between Sections 17 and 21 creates a situation where the vendor of a vacant site entered on the register would have to discharge the levy for two years (and furnish a certificate of discharge to the purchaser for both years) notwithstanding that the event of the sale retrospectively means that the levy for the year preceding the sale becomes 0% (as does the year of the sale).

## **Impact of the Act on conveyancing practice**

Practitioners will need to establish in respect of a property in sale:

- whether it is listed as a vacant site on the register of the relevant local authority (separate to planning search) and/or
  - whether the local authority has issued written notice proposing to enter the property on such register
  - whether an appeal to An Bórd Pleanála has been made by the owner in respect of the entry or proposed entry of the property onto the register and the outcome of any such appeal
  - when the property is on the register whether the planning authority has issued a determination of the market value of the property and whether the owner has appealed such valuation
  - whether and at what rate the local authority has imposed a levy for the property
  - whether the demand for payment of the levy has been appealed by the owner to An Bórd Pleanála (both the amount of the levy and the question of whether the property is a vacant site on 1 January of the year of demand can be appealed each year).
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- Solicitors acting for vendors of a vacant site will need to check that the vendor has paid the levy to the local authority in which the vacant site is situated and that a written request is made for a certificate of discharge for each relevant year.
  - Solicitors acting for purchasers should ensure that a certificate of discharge is available on closing for each year the property was a vacant site.
  - Given the wording of the Act, and in particular sections 19 and 21 it would appear that a special condition will be required in the contract for sale of a vacant site to deal with apportionment of the levy imposed for the year of the sale and to deal with the entitlement of either party to a refund of any payment made for the preceding year and the year of the sale.

## **CONVEYANCING COMMITTEE**

**May 2020**