



An
Bord
Pleanála

Inspector's Report

ABP-303831-19

Type of Appeal	Appeal against a Section 18 Demand for Payment
Location	51a Old Kilmainham, Dublin 8
Planning Authority	Dublin City Council South
Planning Authority VSL Reg. Ref.	VS/0003
Site Owner	Minister for Justice and Law Reform
Planning Authority Decision	Demand for Payment
Date of Site Visit	21st May 2019
Inspector	Erika Casey

1.0 Introduction

- 1.1. This appeal refers to a Section 15 Notice of Demand for Payment of Vacant Site Levy issued by Dublin City Council, stating their demand for a vacant site levy for the year 2018 amounting to €27,000 for a site located at 51A Old Kilmainham Road (VS-0003).
- 1.2. The appeal site has one stated registered owner, Minister for Justice and Law Reform. The Board should be aware that the appeal has been lodged by the Irish Prison Service/Department of Justice and Equality. The Irish Prison Service operates as an executive agency within the Department of Justice and Equality which is overseen by the Minister for Justice and Equality.

2.0 Background

- 2.1 Notice of Proposed Entry on the Vacant Sites Register was issued to the Minister of Justice and Law Reform on the 1st of March 2017. On the 12th of April 2017, the Notice of Entry on the Vacant Sites Register was issued to the Minister for Justice and Law Reform. No appeal was made in respect of the Notice of Entry on the Vacant Sites Register.
- 2.2 A valuation pertaining to the site was issued by the City Valuers Office on the 31st of May 2018. The open market value of the subject site, assuming freehold interest and vacant possession is stated to be €900,000. A Notice to the Owner of Site Entered on Vacant Sites Register and Levy to be Charged was issued to the Minister for Justice and Law Reform on the 31st of May 2018 informing him of this valuation.
- 2.3 A Notice of Determination of Market Value was issued to the Minister for Justice and Law Reform on the 31st May 2018 stating that the valuation placed on the site is €900,000. The valuation was not appealed.
- 2.4 A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to the Minister for Justice and Law Reform on the 12th of February 2019 for the value of €27,000. The appellants have appealed the Demand for Payment Notice issued pursuant to Section 15 of the Urban Regeneration and Housing Act.

3.0 Site Location and Description

3.1 The subject site is located at the junction of Old Kilmainham Road and the South Circular Road. The site is rectangular in shape and has an area of 0.123 Ha. The site is vacant and surrounded by hoarding and a high wall. Development in the vicinity is primarily residential in character. To the east and south are terraces of period red brick properties.

4.0 Statutory Context

URH ACT

4.1 The Notice issued under Section 7(3) of the Act states that the PA is of the opinion that the site referenced is a vacant site within the meaning of Section 5(1)(b) and 5(2) of the Act. The Notice is dated 12th December 2017 and is accompanied by a map outlining the extent of the site to which the Notice relates.

4.2 Section 5(1)(b) of the Act states that a site is a vacant site if 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 reduced the amenity provide by existing infrastructure and facilities (within the meaning of section 48 of the Act of 2000) in the area in which the site is situate or has adverse effects on the character of the area.

4.3 With regard to adverse effects, Section 6(6) of the Act sets out a number of criteria including:

- (a) land or structure in the area were, or are, in a ruinous or neglected condition;
- (b) antisocial behaviour was or is taking place in the area;
- (c) there has been a reduction in the number of habitable houses, or the number of people living in the area;
- (d) and whether or not these matters were affected by the existence of such vacant or idle land.

4.4 The Act defines 'regeneration' land at Section 3 as follows:

“Regeneration land means land identified by a Planning Authority in its development plan or local area plan, after coming into operation of section 28 in accordance with section (10) (2) (h) of the Act of 2000 with the objective of development and renewal of areas in need of regeneration, and includes any structure on such land.”

4.5 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 of the Board in 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.

5.0 **Development Plan Policy**

5.1 The Dublin City Development Plan 2016-2022 is the operative development plan. The subject site is zoned Z4: *To provide for and improve mixed services facilities.*

5.2 One of the key strategies of the Development Plan, as set out in section 4.4 is the creation of a consolidated city, whereby infill sites are sustainably developed and new urban environments are created, by actively promoting active land management, a key component of which is the vacant site levy.

5.3 **Section 2.2.8.4** of the plan states that in accordance with the Urban Regeneration and Housing Act 2015, it is a key pillar of the Development Plan to promote the development and renewal of areas, identified having regard to the core strategy, that are in need of 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.

5.4 **Section 14.9** of the City Development Plan 2016-2022 states that the Vacant Sites Levy will apply to lands zoned Z1, Z2, Z3, **Z4**, Z5, Z6, Z7, Z8, Z10, Z12 and Z14.

- 5.5 **Policy CEE16** states that it is the policy of DCC to: (i) To engage in the ‘active land management’ of vacant sites and properties including those owned by Dublin City Council, as set out in the Government’s Planning Policy Statement 2015; to engage proactively with land-owners, potential developers and investors with the objective of encouraging the early and high quality re-development of such vacant sites. (ii) To implement the Vacant Land Levy for all vacant development sites in the city and to prepare and make publicly available a Register of Vacant Sites in the city as set out in the Urban Regeneration and Housing Act 2015. (iii) To improve access to information on vacant land in the city including details such as location, area, zoning etc. via appropriate media/online resources and the keeping of a public register as a basis of a public dialogue in the public interest. (iv) To encourage and facilitate the rehabilitation and use of vacant and under-utilised buildings including their upper floors. (v) To promote and facilitate the use, including the temporary use, of vacant commercial space and vacant sites, for a wide range of enterprise including cultural uses, and which would comply with the proper planning and sustainable development of the area and the provisions of the Development Plan.
- 5.6 **Policy QH3** states that it is policy of the Council (i) To secure the implementation of the Dublin City Council Housing Strategy in accordance with the provision of national legislation. In this regard, 10% of the land zoned for residential uses, or for a mixture of residential and other uses, shall be reserved for the provision of social and/or affordable housing in order to promote tenure diversity and a socially inclusive city. (ii) To engage in active land management including the implementation of the vacant levy on all vacant residential and regeneration lands as set out in the Urban Regeneration and Housing Act 2015.

6.0 **Planning History**

Planning Authority Reference 3964/14

- 6.1 Permission granted in January 2016 for a development comprising a commercial/retail unit, 7 no. one bed apartments and 6 no. 2 bed apartments, balconies and roof terraces at 2nd and 3rd floors, new vehicular and pedestrian entrances at South Circular Road, 5 no. car parking spaces and ancillary site development works.

7.0 Planning Authority Decision

Planning Authority Reports

7.1 A Vacant Site Report was prepared for the site outlining the dates of the visits to the site, description of the area, zoning, planning history and the type of site for the purposes of the Act which in this case is 'Regeneration' land. It is stated that the majority of the subject site is vacant and complies with the provision of section 5(b)(ii). It is also stated that anti social behaviour is evident.

8.0 The Appeal

Grounds of Appeal

8.1 The grounds of appeal of the appellant can be summarised as follows:

- Note that the IPS have been in discussion with DCC regarding the transfer of the subject site to the Council for the development of a social housing project. The site was to be transferred at a nominal value.
- It was agreed that DCC would in turn lease the site to Nova Initiatives, a voluntary organisation and approved housing body who provide social housing for the homeless. Novas have obtained permission on the subject site for 14 units.
- The conveyance of the site was progressing. However, DCC informed the IPS that they required freehold title to the site. This was not possible as the site is a leasehold with approximately 750 years to run. DCC are seeking confirmation from Novas as to whether a leasehold title would be acceptable. On receipt of this confirmation, the site can be transferred to DCC.
- Note surprise that a demand for €27,000 has been issued in respect of a site valued at €900,000 which was to be transferred at a nominal value to DCC to facilitate social housing development. State that IPS is fully committed to transferring the site to DCC and in this context, wish to appeal against the demand.

Planning Authority Response

8.2 No formal response from the Planning Authority has been received. The Planning Authority have however, attached some email correspondence, the content of which can be summarised as follows:

- Email from Dublin City Council dated the 20th of February 2019 stating that as the site remains vacant and in the ownership of the Minister for Justice and Law Reform, the demand for payment issued on the 12th of February 2019 stands.
- Further email correspondence from DCC dated the 12th of March 2019 notes the governing legislation sets down the criteria to be deemed a vacant site and the subject site meets these criteria.
- Refer to Section 4 of the 2015 Act which states that the scope of the application of the levy is not restricted by ownership and that it applies to both public and private ownership.
- State that DCC welcome the site being brought forward for development and once the site becomes under construction, the site can then be considered for removal from the Vacant Site Register.

9.0 **Assessment**

9.1 This appeal 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.

The site is no longer vacant

9.2 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) (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 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 2019.

9.3 For the purposes of this assessment, I will consider both scenarios.

Is it a Vacant Site

9.4 Section 5(1)(b) of the Act sets out the criteria for a vacant site consisting of 'Regeneration' land. By reference to the Planning Authority notice, it is stated that

the subject site comprises 'Regeneration' land for the purposes of the Vacant Site Levy. The subject site is located in an area zoned Z4 - *To provide for and improve mixed services facilities*". Policy QH3 states that it is policy of the Council to engage in active land management including the implementation of the vacant levy on all vacant residential and regeneration lands as set out in the Urban Regeneration and Housing Act 2015. This assessment takes into account the characteristics of the site in the context of Section 5(1)(b) regeneration land.

The site, or the majority of the site, is vacant or idle: The subject site is over 0.05ha in area. It is evident from the photographic evidence dated 2013 and 2016 attached to the Planning Authority Report regarding the subject site (VS0003) that the site was vacant for a period of 12 months preceding the date of entry on the Register. The appellant has not contested that the site is vacant.

The site being vacant or idle has adverse effects on existing amenities or reduced the amenity provide by existing infrastructure and facilities (within the meaning of section 48 of the Act of 2000) in the area in which the site is situated or has adverse effects on the character of the area: The subject site is located on a prominent corner site at the junction of the Old Kilmainham Road and the South Circular Road. There is existing residential development abutting the site to the east and south. The site is hoarded and is poor condition. The site significantly detracts from the streetscape. It is evident from aerial views that the interior is overgrown and shows no signs of recent use or maintenance. I consider that the land is in a neglected condition and has an adverse effect on existing amenities, particularly adjacent residential properties. I consider that the test of section 6(6) (a) of the Act – 'land or structure in the area were, or are, in a ruinous or neglected condition' is met in this regard.

I note that the report of the Planning Authority have stated that the site is subject to anti-social behaviour. No evidence of same is included in the Planning Authority's Report. During the site visit however, it was apparent that there is evidence of antisocial behaviour at the site. There is extensive graffiti on the gable wall of the adjoining dwelling to the south. I am satisfied that this vandalism to an adjacent dwelling has arisen due to the vacant and neglected condition of the site. Graffiti was also evident on the internal hoarding and external wall. There is no evidence to suggest that as a result of the vacant site that there has been a reduction in the

number of habitable houses, or the number of people living in the area. In conclusion, I consider that 2 of the tests in Section 6(6) are met and that site has an adverse effect on existing amenities and has been subject to anti social behavior and thus can be categorised as a vacant site as defined by Section 5(1)(b).

The site is no longer vacant as of the 1st of January 2019

- 9.5 The appellant has not submitted any evidence to suggest that the subject site is no longer vacant. From the site visit, it is evident that the site remains vacant and no development has commenced on the site.

Levy Calculation

- 9.6 A Notice of Determination of Market Value was issued to the Minister for Justice and Law Reform on the 31st May 2018 stating that the valuation place on the site is €900,000. The valuation was not appealed.
- 9.4 A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to the Minister for Justice and Law Reform on the 12th of February 2019 for the value of €27,000.
- 9.5 The levy rate applicable in this instance is 3%. It is evident, therefore, that the levy calculation has been correctly calculated.

Other Matters

Ownership

- 9.6 The appellant makes reference to section 17(1) of the Act which states:
- “Notwithstanding sections 15 and 16, 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 year, and for the preceding year, shall be zero.”*
- 9.7 It is detailed in the appellant’s submission that the transfer of the subject site to Dublin City Council has been delayed due to a legal issue. Whilst the appellant’s commitment to transferring the site to DCC is noted, this transfer has not yet

occurred. The site remains in the ownership of the Minister. As there has been no change in ownership, the provisions of Section 17 of the Act are not applicable.

Extant Permission

9.8 The appellants also refer to the fact that permission has been obtained for a residential development on the site. In the matter of a current planning application or indeed an extant planning permission for the site, 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.”*

10.0 Recommendation

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 1st of January 2019 and was a vacant site on 25th of February 2019, 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.

11.0 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 neglected condition of the site which detracts from the residential amenities of the area and the streetscape,
- (e) The evidence of antisocial behaviour having taken place on the site,
- (f) The site remains in a vacant condition and no development has commenced,

(g) The amount of the levy has been correctly calculated at 3% of the site value in 2018,

(h) There has been no change in the ownership of the site,

the Board is satisfied that the site was a vacant site on the 1st of January 2019 and was a vacant site on 25th of February 2019, 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.

Erika Casey

Senior Planning Inspector

31st May 2019