



An
Bord
Pleanála

Inspector's Report

ABP-303880-19

Type of Appeal	Appeal against a Section 18 Demand for Payment
Location	127 South Circular Road, Dublin 8
Planning Authority	Dublin City Council South
Planning Authority VSL Reg. Ref.	VS/0093
Site Owner	Cornelius O'Shea and Catherine Russell O' Shea
Planning Authority Decision	Demand for Payment
Date of Site Visit	21st June 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 €55,500 for a site located at 127, South Circular Road, Dublin 8 (VS-0093).
- 1.2. The appeal site has two stated registered owners, Mr. Cornelius O'Shea and Ms. Catherine Russell O'Shea.

2.0 Background

- 2.1 The Notice of Proposed Entry on the Vacant Sites Register was issued to Mr. Cornelius O'Shea and Ms. Catherine Russell O'Shea on the 1st of March 2017. On the 12th of April 2017, the Notice of Entry on the Vacant Sites Register was issued to Mr. Cornelius O'Shea and Ms. Catherine Russell O'Shea. 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 17th of May 2018. The open market value of the subject site, assuming freehold interest and vacant possession, is stated to be €1,850,000. A Notice of Determination of Market Value was issued to Mr. Cornelius O'Shea and Ms. Catherine Russell O'Shea on the 31st of May 2018. A Notice to Owner of Site Entered on Vacant Sites Register and Levy to be Charged was issued to Mr. Cornelius O'Shea and Ms. Catherine Russell O'Shea Limited on the 31st of May 2018 informing them of this valuation. The valuation was not appealed.
- 2.3 A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to Mr. Cornelius O'Shea and Ms. Catherine Russell O'Shea on the 12th of February 2019 for the value of €55,500. 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 with an area of 0.124 ha is located on South Circular Road adjacent to an existing 3 storey residential dwelling (protected structure), no. 127 South Circular Road. This existing dwelling whilst in very poor condition, is in habitable use. The site currently accommodates a 2 storey building which is in a derelict condition.

It is understood this structure may have been a former coach house. It is physically attached to the main dwelling – no. 127. The site is overgrown and has a poor visual appearance. There is evidence of litter and dumping of household goods. The site is served by two vehicular entrances to the front, both of which are gated. Only one of the entrances however, is in operation.

3.2 The site is directly accessible from the rear of no. 127 and forms part of the curtilage of this property. The site is bound by a high stone wall along the western boundary. There is a shed structure on the south eastern corner. Development in the vicinity is primarily residential in character.

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(a)) and 5(2) of the Act. The Notice is dated 12th April 2017 and is accompanied by a map outlining the extent of the site to which the Notice relates.

4.2 Section 5(1)(a) of the Act as amended by Section 63 of the Planning and Development (Amendment) Act 2018 states that a site is a vacant site if in the case of a site consisting of ‘Residential Land’ –

(i) The site is situated in an area where 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 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.

4.4 The Act defines ‘residential’ land at Section 3 as follows:

“residential” land means land included by a planning authority in its development plan or local area plan in accordance with section 10(2)(a) of the Act 2000 with the

objective of zoning for use solely or primarily for residential purposes, and includes any structures on such land.

4.5 Sections 5 of the Act defines a site for the purpose of the application of the vacant site levy as:

“any area of land exceeding 0.05ha identified by a planning authority in its functional area but does not include any structure that is a person’s home.”

‘Home’ is defined as:

“A dwelling in which the person ordinarily resides (notwithstanding any periods during which the dwelling is vacant) and includes any garden or portion of ground attached to a usually occupied with the dwelling or otherwise required for the amenity of convenience of the dwelling.”

This applies whether the property is owner occupied or rented i.e. tenure neutral.

4.6 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 Z1: *To protect, provide and improve residential amenity.*

5.2 The dwelling adjacent to the site to the east site is identified as a protected structure. It is described as a ‘house’ on the register.

5.3 One of the key strategies of the 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.

- 5.4 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.
- 5.5 Section 14.9 of the Development Plan 2016-2022 states that the VSL will apply to lands zoned **Z1**, Z2, Z3, Z4, Z5, Z6, Z7, Z8, Z10, Z12 and Z14.
- 5.6 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.
- 5.7 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

6.1 No recent relevant planning history.

7.0 Planning Authority Decision

Planning Authority Reports

7.1 A Vacant Site Report was prepared for the site outlining the date of the site visit, description of the area, zoning, planning history and the type of site for the purposes of the Act which in this case is 'Residential' land. It is stated that the site is vacant/idle, is suitable for housing and is located in an area in need of same. Having regard to the above criteria and information, it is considered that the site should be included on the register.

7.2 Further information was submitted by the Planning Authority in July 2019 demonstrating compliance with section 6(4) of the Urban Regeneration and Housing Act.

8.0 The Appeal

Grounds of Appeal

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

- The appellant were unaware and not in a position to respond to the intention to register the property as a vacant site. Refers to the personal circumstances of the property owners.
- 127, South Circular Road consists of a fully occupied house and garden which is an integral part of the property. Any such designation of site boundaries is entirely arbitrary.
- The property was originally a Church of Ireland Rectory and is a protected structure. Residents of the adjoining house no. 127 have full access to the garden which is used for recreational purposes as well as off street parking. The site has become overgrown due the ill health of one of the appellants.

- The coach house on the site is in a derelict condition and is used for storage. It was never in residential use. The PA may have erroneously considered that the garden was attached to the coach house.
- There are no physical boundaries that facilitate the designation that the garden is a site.
- The boundary lines on the Vacant Site registration map are arbitrary and the main house would be left with no garden. The garden is commensurate in scale with the large rear gardens of the surrounding houses.
- The determination that the garden is suitable for the provision of housing fails to consider multitude of physical and legal constraints which prevent any development.
- There is a right of way pertaining to the site. The right of way prevents the development of housing within the garden.
- There is a major combined sewer culvert running through the site which it is forbidden to build over.
- The house and garden were repeatedly subject to extensive flooding.
- Cite legal and financial constraints associated with the development of the site.
- The site has no planning history.

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)(a) of the Act sets out the criteria for a vacant site consisting of 'Residential' land. By reference to the Planning Authority notice, it is stated that the subject site comprises 'Residential' land for the purposes of the Vacant Site Levy. The subject site is located in an area zoned Z1 - *To protect, provide and improve residential amenity to provide for and improve mixed services facilities*". This assessment takes into account the characteristics of the site in the context of Section 5(1)(a) residential land.

The Need for housing in an Area

9.5 This it to be determined by reference to section 6(4) of the Act:

- (a) The housing strategy and the core strategy of the Planning Authority.
- (b) House prices and the cost of renting houses in the area.
- (c) The number of houses qualified for social housing support in accordance with section 20 of the Housing (Miscellaneous Provisions) Act 2009 and that have specified the area as an area of choice for the receipt of such support and any changes to that number since the adoption of the Planning Authority's development plan.
- (d) Whether the number of habitable houses available for purchase or rent was less than 5% of the total number of houses in the area.

9.6 I have reviewed the report submitted by Dublin City Council in relation to housing need in the Dublin City Council area. I note in particular the conclusion that in the Council's administrative area, that there was less than 5% of habitable houses available for lease or rent in the area. I am satisfied on the basis of this information that there is a need for housing in the area.

Suitability of the Site For Housing

9.7 Suitability of the site for housing is to be determined by reference to Section 6(5) of the Act.

- (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 2000) necessary to enable housing to be provided and serviced, and
- (c) whether there was anything affecting the physical condition of the lands comprising the site which might affect the provision of housing.

9.8 The development of the site for residential use is in accordance with the provisions of the core strategy set out in the Dublin City Development Plan. As detailed in section 5 above, it is a key pillar of the Development Plan to promote the development and renewal of areas including infill brownfield sites, identified having regard to the core strategy.

9.9 The subject site is located on the South Circular Road. It is zoned for development and the area is served by existing public infrastructure and facilities that would enable housing to be provided and serviced.

9.10 The appellant has set out that there are a number of constraints that render the site unsuitable for housing development. Whilst the submission regarding legal and financial constraints are noted, the legislation only refers to 'anything affecting the physical condition of the lands' as the criteria for assessing the suitability of the site for housing. There are is no provision to discount the suitability of the site for the housing on any other grounds. Any legal or financial impediment to the development of this site are outside this scope of this assessment.

9.11 With reference to the right of way, no legal documentation has been submitted to demonstrate same and in any event, the presence of such a way leave would not necessarily preclude the future development of the site for housing. Similarly, no documentation regarding the combined sewer culvert running through the site has been provided and I am not satisfied that this would necessarily pose a constraint to the future development of the lands. Having regard to the location of the site, within an established urban area, I am satisfied that any flooding that has historically arisen due to surface water can be appropriately addressed through detailed design and the implementation of SUDS. The fact that the site does not have a planning history, is not evidence that the site is not suitable for housing development.

Vacant or Idle

9.12 The definition of vacant or idle as it relates to residential land states that the site, or the majority of the site is:

- (I) vacant or idle
- (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.

9.13 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 that the site was idle and the existing structure vacant for a period of 12 months preceding the date of entry on the Register.

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

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

Levy Calculation

9.15 A Notice to Owner of Site Entered On Vacant Sites Register and Levy to be Charged was issued to Mr. Cornelius O'Shea and Ms. Catherine Russell O'Shea on the 31st May 2018 stating that the valuation place on the site is €1,850,000. The valuation was not appealed.

9.16 A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to Mr. Cornelius O'Shea and Ms. Catherine Russell O'Shea on the 12th of February 2019 for the value of €55,500.

9.17 The levy rate applicable in this instance is 3%. It is evident, therefore, that the levy calculation has been correctly calculated.

Other Matters

Procedural

9.18 It is stated by the Appellant that Ms. Russell's rights and interests have been injured as she had no opportunity at any stage to appeal the initial registration and subsequent valuation. As detailed above in section 2, the following notices have been issued to both parties:

- Notice of Proposed Entry on the Vacant Sites Register was issued to Mr. Cornelius O'Shea and Ms. Catherine Russell O'Shea on the 1st of March 2017.
- Notice of Entry on the Vacant Sites Register was issued to Mr. Cornelius O'Shea and Ms. Catherine Russell O'Shea on the 12th of April 2017,
- A Notice of Determination of Market Value was issued to Mr. Cornelius O'Shea and Ms. Catherine Russell O'Shea on the 31st of May 2018.
- A Notice to Owner of Site Entered on Vacant Sites Register and Levy to be Charged was issued to Mr. Cornelius O'Shea and Ms. Catherine Russell O'Shea Limited on the 31st of May 2018 informing them of this valuation.
- A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to Mr. Cornelius O'Shea and Ms. Catherine Russell O'Shea on the 12th of February 2019.

9.19 I am satisfied that due process was followed and the appellant have been afforded the right to appeal at each stage. The appellants have invoked their right to appeal the Notice for Demand for Payment under Section 15 of the Act. Any dispute regarding the legal procedures of issuing the subject notices is a matter between the appellant and the Planning Authority.

Compliance with the Definition of a Vacant Site

9.20 It is set out by the appellant that the subject site forms part of the garden of no. 127 South Circular Road. It is argued that it forms part of the curtilage of this property and is used exclusively by the residents of the property for recreational purposes as well as off street parking. It is stated that the single structure on the site is a Coach House that is intrinsically linked to the main building. There is no clear definable boundary between the main house and the coach house.

9.21 Having regard to the definitions set out in Section 5(2) of the Act, the subject site is

clearly larger than 0.5ha and does not include a structure that is a person's 'home'. The existing building on the site is in a derelict condition and it is detailed by the appellant that it is used solely for storage purposes. It was evident from the site visit that the structure has not been in use as a habitable structure for many years.

9.22 The definition of 'home' however, states that this can include *“any garden or portion of ground attached to and usually occupied with the dwelling or otherwise required for the amenity or convenience of the dwelling”*.

9.23 I note in this instance that the site map that accompanies the Notice of Entry on the Vacant Sites Register includes all of the lands to the side and rear of no. 127 South Circular Road. I consider that these lands however, form the curtilage of the protected structure and are intrinsically and functionally linked to this dwelling.

9.24 Whilst I note that the site is currently in a very poor state of repair and overgrown and has a poor amenity value, I am of the view that the site identified whilst large, would form the amenity or garden area to serve the main dwelling (no. 127). No. 127 is occupied and in residential use. It is reasonable to assume the occupants of this dwelling would have access to a garden area. I would concur with the appellant, that if the site (as identified) in its entirety were to be developed, no. 127 would be left with no garden.

9.25 Having regard to foregoing, I consider that the subject site is part of the curtilage of no. 127 and that the site serves as the garden/recreational/amenity area associated with no. 127. In this context, I am not satisfied that the site constitutes a vacant site in accordance with the provisions of the legislation.

10.0 Recommendation

10.1 I recommend that in accordance with Section 18 (3) of the Urban Regeneration and Housing Act 2015 (as amended), the Board should cancel the Notice of Demand for Payment of Vacant Site Levy as the site was not a vacant site as of the 1st of January 2019 and was not a vacant site on 15th March 2019, the date on which the appeal was made. The demand for payment of the vacant site levy under Section 15 of the Urban Regeneration and Housing Act 2015 is, therefore, cancelled. 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.

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) That the identified site forms the curtilage of no. 127 South Circular Road (a protected structure) and is required at least in part for the amenity or convenience of this dwelling

the Board is not satisfied that the site was a vacant site on the 1st of January 2019 and was a vacant site on 15th of March 2019, the date on which the appeal was made. The demand for payment of the vacant site levy under Section 15 of the Urban Regeneration and Housing Act 2015 is, therefore, cancelled.

Erika Casey

Senior Planning Inspector

13th August 2019