



An
Bord
Pleanála

Inspector's Report

ABP-303902-19

Type of Appeal	Appeal against a Section 18 Demand for Payment
Location	297 North Circular Road, Phibsborough, Dublin 7
Planning Authority	Dublin City Council South
Planning Authority VSL Reg. Ref.	VS/0055
Site Owner	Independent Trustee Company Limited
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 €36,000 for a site located at 297 North Circular Road, Dublin 7 (VS-0055).
- 1.2. The appeal site has one stated registered owner, Independent Trustee Company Limited.

2.0 Background

- 2.1 The Notice of Proposed Entry on the Vacant Sites Register was issued to Independent Trustee Company Limited on the 19th of June 2017. On the 28th of July 2017, the Notice of Entry on the Vacant Sites Register was issued to Independent Trustee Company Limited. 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 €1,200,000. A Notice of Determination of Market Value was issued to Independent Trustee Company Limited on the 31st May 2018 stating that the valuation placed on the site is €1,200,000,000. A Notice to Owner of Site Entered on Vacant Sites Register and Levy to be Charged was issued to Independent Trustee Company 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 Independent Trustee Company Limited on the 12th of February 2019 for the value of €36,000. 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 with an area of 0.2762 ha is located at 297 North Circular Road, Dublin 7. The site currently accommodates a substantial three storey detached house (protected structure). The dwelling is derelict and in poor condition and windows and doors have been bricked/blocked up. The front boundary of the site

comprises a c. 1.5m high wall with a vehicular entrance at the eastern corner and a pedestrian entrance at the western corner. There are a number of substantial trees along the front boundary. There is hoarding along the front southern boundary. This has been vandalised and the site has a poor visual appearance. Development in the vicinity is primarily residential in character. To the east, is a commercial car sales garage. To the west and north-west of the site are the rear gardens of the two storey semi-detached dwellings of Cherrymount Park.

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 28th July 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 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 subject dwelling on the site is identified as a protected structure.

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

Planning Authority Reference 4313/15/Appeal Reference PL29N.247378

- 6.1 Permission granted in February 2017 for a development comprising:

- The construction of six number four-bed three-storey houses to the rear of Stone Villa.
- A new three-storey extension to the side (west) and rear of Stone Villa.
- Renovation the existing Protected Structure, to provide six number two-bed apartments.
- Widening of existing vehicular entrance.
- All associated site development works, bin storage, surface car parking and landscaping.

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:
- Consider that the levy is not applicable as the property has been declared as a residential property for local property tax purposes. States that the property in this case is not land in the sense envisaged by the Act as there is a significant site coverage with a residential building which is a protected structure.
 - State that Local Property Tax has been paid with respect of the subject site. The property for property tax purposes has been treated as being in residential use.
 - It is inconceivable that a property can be placed on the Vacant Sites Register when the tax payer has returned the property for local property tax purposes.
 - Notes that the site accommodates a protected structure and that permission has been granted for a residential development under appeal reference PL29N.247378. State that due to the special considerations required for a protected structure, that this invariably delayed the planning process.
 - State that it is intended to sell the subject site and the proposed purchaser is willing to give a commitment to the Local Authority to redevelop the property in accordance with the existing grant of permission or a new permission obtained for the site.

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

9.8 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.

9.9 I note the planning history of the site which includes an extant permission for 12 no. units. Having regard to this permitted development, it is evident that the subject site is suitable for housing. The site is located within the existing urban area and is served by existing infrastructure. Nothing has been identified by the appellant which would affect the physical condition of the lands which might affect the provision of housing.

Vacant or Idle

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

- (l) 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.

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 house 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

- 9.11 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 idle, that the dwelling is vacant and no development has commenced on the site. The house is unoccupied and the site and dwelling remain in a derelict condition.

Levy Calculation

- 9.6 A Notice to Owner of Site Entered On Vacant Sites Register and Levy to be Charged was issued to Independent Trustee Company Limited on the 31st May 2018 stating that the valuation place on the site is €1,200,000. 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 Independent Trustee Company Limited on the 12th of February 2019 for the value of €36,000.
- 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

Property Tax

- 9.6 The appellant makes reference to the fact that property tax has been paid on the subject site. There is no exemption set out in the legislation that the vacant site levy is not applicable to a site where property tax has been paid.
- 9.7 Reference is also made to the fact that the property in this case is not residential

land in the sense envisaged by the Act due to the fact that there is a protected structure on the site. Residential land however, is clearly defined under Section 3 of the Act as:

“Land included by a planning authority in its development plan in accordance with section 10(2) (a) of the Act with the objective of zoning for use solely or primarily for residential purposes, and includes any structures on such land.”

- 9.8 As detailed above the subject site is zoned Z1: *To protect, provide and improve residential amenity to provide for and improve mixed services facilities* and, therefore, accords with this definition. The definition also makes explicit reference to any structure on such lands and, therefore, notwithstanding the fact that there is a dwelling on the site (irrespective that it is a protected structure), the site constitutes a residential site.

Extant Permission

- 9.9 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

- 10.1 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 1st of January 2019 and was a vacant site on 26th of March 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,
- (iv) The fact that the site is situated in an area where there is a need for housing and having regard to the planning history is suitable for the provision of housing,
- (d) The site remains in a vacant condition and no development has commenced,
- (e) The amount of the levy has been correctly calculated at 3% of the site value in 2018,
- (f) 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 26th of March 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

13th August 2019