



An  
Bord  
Pleanála

## Inspector's Report

**ABP-303914-19**

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<b>Type of Appeal</b>	Appeal against a Section 18 Demand for Payment
<b>Location</b>	32-40 Benburb Street, Dublin 7
<b>Planning Authority</b>	Dublin City Council
<b>Planning Authority VSL Reg. Ref.</b>	VS/0013
<b>Site Owner</b>	Benburb Street Property Company Limited
<b>Planning Authority Decision</b>	Demand for Payment
<b>Date of Site Visit</b>	21st June 2019 and 28 <sup>th</sup> of June 2019
<b>Inspector</b>	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 €259,500 for a site located at 32-40 Benburb Street (VS-0013).
- 1.2. The appeal site has one stated registered owner, Benburb Street Property Company Limited of Law Society of Ireland, Blackhall Place, Dublin 7.

## 2.0 Background

- 2.1 Notice of Proposed Entry on the Vacant Sites Register was issued to Benburb Street Property Company Limited on the 19<sup>th</sup> June 2017. On the 28<sup>th</sup> of July 2017, the Notice of Entry on the Vacant Sites Register was issued to Benburb Street Property Company Limited. An appeal was made in respect of the Notice of Entry on the Vacant Sites Register, ABP Reference 29E.VV0015. On the 14<sup>th</sup> of December 2017, the Board determined that the subject site is a vacant site within the meaning of the Act.
- 2.2 A valuation pertaining to the site was issued by the City Valuers Office on the 21<sup>st</sup> of May 2018. The open market value of the subject site, assuming freehold interest and vacant possession, is stated to be €8.65m. A Notice of Determination of Market Value was issued to Benburb Street Property Company Limited on the 31<sup>st</sup> May 2018 stating that the valuation placed on the site is €8.65m. A Notice to the Owner of Site Entered on Vacant Sites Register and Levy to be Charged was issued to Benburb Street Property Company Limited on the 31<sup>st</sup> of May 2018 informing them of this valuation.
- 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 the Benburb Street Property Company Limited on the 12<sup>th</sup> of February 2019 for the value of €259,500. 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 appeal site is located on Benburb Street in Dublin City Centre on the northern side of the River Liffey and to the west of the main commercial core. Benburb Street

continues on an east to west alignment from Queen Street to Croppies' Acre. The site sits on the northern side of the road opposite Ellis Street, which provides access to the Quays.

- 3.2 The site is bounded by an apartment development to the west and by a terrace of derelict buildings to the east. To the north of the site, is the Law Society of Ireland. The Luas operates in both directions on Benburb Street and there is a westbound traffic/ parking lane to the southern side of the tracks.
- 3.3 The stated area of the site is 0.4378 hectare. There is a warehouse in the north-western corner of the site. It is a substantial structure and currently in a poor state of repair. At the time of the site visit, internally the shed was used for the storage of a truck, office equipment including chairs, desks and filing cabinets, paints and football goals.
- 3.4 The site has a new ramped entrance from the Law Society of Ireland grounds. Part of the site has been surfaced as a 5 a side pitch and basketball court. A further part of the site adjacent to the warehouse has been covered in mulch and some exercise machines installed. The pitch and exercise area are enclosed with fencing. The remainder of the site remains undeveloped and vacant. There are larger areas of hard standing and unfinished ground in poor condition. There were a number of areas covered in building debris and rubbish. The site is bound internally by a high concrete boundary wall. There was evidence of graffiti on the walls and on the shed structure.
- 3.5 The road boundary along Benburb Street comprises hoarding with artwork and there are two available accesses.

## 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 28<sup>th</sup> July 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 reduces 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.

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

- (a) land or structures in the area were, or are, in a ruinous or neglected condition;
- (b) anti-social 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;

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 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 “Z5 – to consolidate and facilitate the development of the

*central area, and to identify, reinforce, strengthen and protect its civic design character and dignity.”*

- 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 It is recognised in Section 6.5.4 that the speedy re-development of extensive vacant/under-utilised sites, especially in the city centre zoned area, is critical to sustainable development. In this regard, Policy CEE15 seeks *“to promote and facilitate the transformation of regeneration areas, especially inner city areas, as a key policy priority and opportunity to improve the attractiveness and competitiveness of the city, including by promoting high-quality private and public investment and by seeking European Union funding to support regeneration initiatives, for the benefit of residents, employees and visitors.”*
- 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.

5.8 It is a policy of the Council (**Policy QH5**) *“to promote residential development addressing any shortfall in housing provision through active land management and a coordinated planned approach to developing appropriately zoned lands at key locations including regeneration areas, vacant sites and under-utilised sites.”*

## 6.0 Planning History

### Section 5 Declaration 0491/18

6.1 Site at 32-40 Benburb Street. Whether the laying out and the use of land for athletics, or sports, and in part as a park where no charge is made for admission of the public to the land all of which are to be associated with the operation of the wider campus at Blackhall Place operated by the Law Society of Ireland is or is not development and is or is not exempted development.

6.2 Dublin City Council issued a Notification of Declaration on Development and Exempted Development on the 22<sup>nd</sup> of January 2019 stating that it is considered that the proposed works would be considered exempted development as provided for under Schedule 2, Part 1, Class 33 (c) and Article 9(1) (a) (xii) of the Planning and Development Regulations 2001 as amended.

## **An Bord Pleanála Reference 29E.VV0015**

- 6.3 Section 9(1) appeal against the entry on the Vacant Sites Register with respect to a site located at 32-40 Benburb Street. On the 14<sup>th</sup> of December 2017, the Board confirmed the entry on the Vacant Sites Register.

## **Planning Authority Reference 1569/04**

- 6.4 Permission granted for A. Demolition of existing storage buildings on site. B. Construction of a primarily apartment building to accommodate 166 residential units in 3 wings consisting of 4 to 6 storeys including set back penthouse facing onto Benburb Street, 8 storey slender tower feature on axis to Ellis Street and 7 storeys including set back penthouse levels to courtyard wing.

## **7.0 Planning Authority Decision**

### **Planning Authority Reports**

- 7.1 A Vacant Site Report was prepared for the site when it was proposed for entry on the Vacant Sites Register. This outlines 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.
- 7.2 The report details that a site inspection on 13<sup>th</sup> April 2017 noted that approximately one third of the building on the site was in use for storage and the remainder of the site contained some building debris, but was mainly cleared of all structures. There was evidence of graffiti and litter in some places on the site. The site also accommodated a shipping container. It is stated that access could only be gained from the Benburb Street side of the site and both access ways did not appear to have been in active everyday use.
- 7.3 The report concluded that the site fits the criteria outlined under Section 5(b) of the Urban Regeneration and Housing Act, 2015 and should be included on the Register. Following on from a second site inspection, it was noted that while a small portion of the warehouse unit to the rear of the site appeared to be used as storage space, the majority of the site is vacant or idle and was having an adverse effect on the character of the area.

## 8.0 The Appeal

### Grounds of Appeal

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

- States that the Benburb Street Property Company was set up by the Law Society to manage and develop its property at Benburb Street as part of the wider Blackhall Place complex for the Law Society's own purposes; namely the co-location of the Law Society's education campus, its administration offices and other accommodation linked to its facilities. Submit that there is a clear distinction between this particular property owner and other property owners who would for the most part develop their assets for speculative development and gain. State that the Law Society of Ireland is a nationally significant organisation and should be afforded that recognition in the context of the proper planning and sustainable development of this area.
- Submit that the Law Society have used the subject lands for various purposes related to the primary function of the Blackhall Place campus. The site was acquired so as to ensure that the envisaged expansion of accommodation required for the Law Society could occur adjacent to its historic base. A masterplan was prepared for the site in 2007/2008. The broad vision of the masterplan is the development of a legal quarter. Development did not progress due to the economic crash. The masterplan was updated in 2018. It is anticipated that development will commence on the site in the next 18-24 months.
- States that the site is zoned Z5 which does not seek solely residential uses. This zoning is intended to provide a mixed use environment, but with retail and commercial uses being the primary uses. States that the lands in question are clearly, therefore, not a site consisting of residential land under the definition of the Act. Notes that the only areas identified within the City Development Plan as being regeneration land are the Strategic Development and Regeneration Areas (SDRA's) and that the subject site is not identified as such.
- Refer to the previous decision of the Board under Reference 29E. VV0015 and states that since then, there has been a material change in circumstances. State that the site has been further developed for amenity and recreational



purposes comprising the laying out and the use of land for athletics and sports as well as in part as a park all of which are associated with the operation of the wider campus at Blackhall Place operated by the Law Society.

- The site consists of a 5 a side/basketball games area, an exercise area to accommodate a range of fitness activities and a landscaped area. In addition, the continued use of the existing warehouse building which has had its roof redone is also accommodated. The boundary treatment has been replaced with an attractive designed façade. Access to the lands is provided through the Blackhall Place entrance. The sports facility is up and running and is available to members of the public to use free of charge through a booking system. Signage advertising same has been erected. Local schools, sports clubs and community groups have been contacted to ensure they are aware that this amenity exists.
- Note that the broad concept provided for the laying out of these lands for new development was considered exempt by Dublin City Council by Order dated the 22<sup>nd</sup> of January 2019 (Application Reference 0491/18).
- Note that since the erection of the new graphic boundary, there has been no graffiti. The boundary treatment is of a high quality and could not be considered to have any adverse effect on existing amenities or to reduce the amenity provided by existing public infrastructure and facilities or to have any effect on the character of the area. The hoarding has improved the visual amenity of the area.
- The existing warehouse will continue to be used for storage of equipment generally associated with the wider educational campus. Note that the Probation Service are currently in discussion with the Law Society of Ireland to provide a social enterprise coffee station.
- State that property is neither vacant nor idle and should no longer be included on the Vacant Sites Register. Furthermore, the property could not reasonably be considered to be in a ruinous or neglected condition. There is no sign of blight or decay evident. There is no evidence of anti-social behaviour.
- The site is located within the Arran Quay C District Electoral Division of the City. The Census 2016 noted that there were 4,471 persons living in this area, an increase of 7.2% from 2011. The population of Dublin grew by 5.6% over the

same period. It is evident that the status of the site has not had an adverse effect on the number of houses or the number of people living in the area.

### **Planning Authority Response**

8.2 State that the content of the appellant's appeal has been reviewed by the Vacant Sites Section, and that their position regarding the sites suitability for the Vacant Sites Register and levy for 2019 remains unchanged.

### **Further Response**

- The appellant provided a further response to the Planning Authority Response on the 9<sup>th</sup> of May 2019.
- Note that the PA have failed to address any of the points detailed in the appeal and there is an absence of any substantive contrary evidence.
- State that the existing shed on the site is used for the purposes of storing material and equipment. Refer to Appeal Reference ABP302359-10 where the Board was satisfied that the site was in use for storage and maintenance equipment associated with Croke Park.
- Submit that the site is no longer a vacant site nor is it idle having regard to the provisions of the Act.

## **9.0 Assessment**

9.1 This appeal relates to a Section 15 Demand for Payment of Vacant Site Levy Notice. 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.

### **(a) 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 1<sup>st</sup> 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 "*Z5 – to consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity.*" 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.

9.5 I note the appellant's contention that the subject site does not constitute 'regeneration' land as it has not be designated as a Strategic Development and Regeneration Area under the core strategy. However, it is clearly stated in **Section 14.9** of the Dublin City Development Plan 2016-2022 that the Vacant Sites Levy will apply to lands zoned Z1, Z2, Z3, Z4, **Z5**, Z6, Z7, Z8, Z10, Z12 and Z14. I am satisfied in this context that the Vacant Site levy is applicable to the subject site.

9.6 With regard to the contention that there should be a distinction between this particular property owner (Benburb Street Property Company Limited) and other property owners due to the fact that the Law Society of Ireland is a nationally significant organisation and does not intend to develop the land for speculative purposes, I refer the Board to Appendix 1 of Circular Letter PL7/2016 which states that the scope of the application of the levy is not restricted by ownership. It applies to land in both public and private ownership. In this regard, irrespective of the status of the Law Society of Ireland or their intentions regarding the future development of the land, the levy in my view is applicable.

9.7 The Section 7(3) Notice of Proposed Entry on the Vacant Sites Register was issued to the Benburb Street Property Company Limited on the 19<sup>th</sup> of June 2017. Subsequently a Section 9 appeal was made to the Board under appeal reference 29E.VV0015. A detailed assessment as to whether the site constituted a vacant site

was carried out with the Reporting Inspector noting that the majority of the site had been vacant or idle for the duration of the 12 months preceding its entry on the Register, that the site had been in a disused and neglected condition for some time and notwithstanding the appearance of hoarding along the front boundary, the site adversely affected existing amenities and reduced the amenity provided by existing public infrastructure and facilities. The Board confirmed the entry on the vacant Sites Register on the 8<sup>th</sup> of December 2017.

- 9.8 Having regard to the previous confirmation and order issued by the Board, I am satisfied that the site constituted a vacant site when the Section 7(3) Notice was issued and that this matter was previously adjudicated on. I do not, therefore, propose to consider this matter further in this assessment.

**The site is no longer vacant as of the 1<sup>st</sup> of January 2019**

- 9.9 The appellant sets out that in the intervening time since the Section 7 (3) Notice was confirmed that there has been a material change in circumstances and that as a result, the site no longer constitutes a vacant site. As noted above the Section 7(3) Notice was issued on the 28<sup>th</sup> of July 2017. On the 14<sup>th</sup> of December 2017, the Board determined that the subject site is a vacant site within the meaning of the Act. The Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to the Benburb Street Property Company Limited on the 12<sup>th</sup> of February 2019.

- 9.10 In assessing this matter, I will consider the characteristics of the site in the context of Section 5(1)(b) 'regeneration' land. There are two specific criteria to be considered in this regard.

**The site, or the majority of the site, is vacant or idle:**

- 9.11 The principal argument set out by the appellant is that the site is no longer vacant. It is stated that the site now accommodates a 5 a side football/basketball games area, an exercise area to accommodate a range of fitness activities and a landscaped area. A section 5 declaration issued by Dublin City Council has confirmed that these works are exempt. The existing warehouse building is being used for storage purposes for equipment associated with the wider educational campus and activities of the Law Society of Ireland.

- 9.12 I refer the Board to the preamble of the Urban Regeneration and Housing Act 2015 which states that the purpose of the Act is to make provision with respect to land in areas in which housing is required and in areas which are in need of renewal to prevent it lying idle or remaining vacant.
- 9.13 Circular Letter PL7/2016 further details that the intent of the Vacant Site Levy is as a land activation measure primarily to incentivise the activation of development sites and to bring vacant or underutilised land in urban areas into beneficial use by way of a levy. It states that it is important that appropriate mechanisms are put in place to ensure that land, particularly in urban areas is used in the most efficient and effective manner possible. The levy is intended to incentivise such development and ensure that land in urban areas is used appropriately.
- 9.14 Appendix 3 of the circular sets out guidance regarding identifying vacant sites. It states:
- “In certain circumstances a site that is vacant may be used on a temporary short term or periodic ad hoc basis.....A site that is vacant and used for such temporary purposes would not be considered as being in full and active use. Therefore, the levy can be applied.”*
- 9.15 I note in the appellant’s submission it is detailed that a masterplan for the future development of the lands has been prepared and discussed with the City Council. It is the intention that the land will be developed for the expansion of the activities of the Law Society and to provide for new accommodation. It is stated that it is their aspiration to commence development on the site in the next 18 to 24 months.
- 9.16 In this context, it is evident that the landscape, sport and recreational facilities installed on the site are a short term, temporary measure pending the development of the site. The facilities, whilst open to the public are only available on an ad-hoc basis.
- 9.17 I am of the view that the current temporary use of the site for such purposes does not represent an appropriate and efficient use of the lands in accordance with the guiding principles of the legislation. It my opinion that the land owners are utilising exempted development provisions in order to try and avoid payment of the vacant site levy. The use of the lands for these temporary sport and recreational uses is not development that promotes an efficient and effective use of the lands and does not

represent the sustainable development of these strategic brownfield, serviced inner city lands immediately adjacent to the Luas. Furthermore, I also note that whilst some of the lands have been developed for temporary sports/recreational use, large parts of the site remain undeveloped and vacant/idle. The lands in their entirety are, therefore, not in full or active use. I consider that the majority of the site is vacant.

- 9.18 In conclusion, whilst there has been a change of circumstances since the Board confirmed that the site is a vacant site under appeal reference 29E.VV0015, I consider that the current ad hoc use of part of the site for sport and recreational use is a temporary use. It has been clearly stated by the appellant that it is their intention to develop the lands comprehensively in accordance with a masterplan for expansion of the Law Society's activities. In this regard, I consider that the site constitutes a vacant site by virtue of the temporary nature of the existing recreational/sporting use and the fact that the majority of the site remains vacant and idle.
- 9.19 With regard to the storage shed/warehouse, I note that in the previous assessment carried out under VV0015 that this issue was considered with the Inspector noting that as the existing warehouse structure and access route thereto only accounted for a small part of the overall site area, that this would not negate the fact that the site was a vacant site.
- 9.20 It is apparent that the shed was historically used for storage of pallets (as detailed in the Vacant Site Report prepared by Dublin City Council). At the time the site visit was undertaken in relation to the current appeal, the shed was being used for the storage of some office equipment (table, chairs, filing cabinets etc.), a truck, paint and football goals. Reference is made to a recent decision of the Board under Appeal Reference ABP-302359-18 where the Board held that the site was in use for storage and maintenance equipment associated with the maintenance and operation of the pitch and stadium in Croke Park.
- 9.21 I consider however, that in that case there were materially different circumstances. As detailed in the Inspector's Report, the Croke Park site was used for the storing of heavy plant and machinery required as part of the functioning of Croke Park for playing games and events. This included a variety of pitch maintenance machinery including grow lights used on a day to day basis for pitch maintenance. The report noted:

*“They are very large structures with a height of c.2m and extend across the pitch which is c. 90 m wide. These are very bulky structures which are essential for the maintenance of the pitch. When not in use the structures must be stored in a safe, secure location and the subject site given its proximity and accessibility to the stadium provides the current location for same. The existing stadium itself does not have any suitable location for the storage of these very large and bulky grow lights, while they are not in use, given the large area required for their storage. I would consider therefore that the site is not vacant or idle as it has a valid purpose, the storage of essential elements associated with the maintenance of the Stadium.”*

9.22 In the subject case, the warehouse/shed structure is being used for the storage of office equipment, paint, football goals and a truck. I note that it is apparent that this use has only occurred since the Section 7 (3) Notice was confirmed. I am not satisfied that the use of the warehouse/shed is essential or has a valid purpose for the operation of the adjoining Law Society Campus. The storage of such equipment is not essential to the functioning of the campus. Having regard to the overall extent of the vacant site, the current use of the shed/warehouse which has only occurred since the Section (3) Notice was confirmed and the previous adjudication of this matter by the Board, I do not consider that there has been any material change in circumstances that would not warrant the determination that the site is no longer 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.**

9.23 It is stated under section 6(6) of the Act that the matters relating to adverse effects are to be determined by reference to the following criteria:

*(a) Land and structures in the area were, or are, in a ruinous or neglected condition*

*(b) Anti-social behaviour was or is taking place in the area, or*

*(c) There has been a reduction in the number of habitable houses, or the number of people living, in the area*

*and whether or not these matters were affected by the existence of such vacant or idle land*

I will consider each of these in turn.

**Land and structures in the area were, or are, in a ruinous or neglected condition**

- 9.24 It is contended by the appellant that they have gone to considerable lengths to maintain the property in good condition. In particular, new hoarding has been erected which has substantially improved the visual amenities of the area. It is stated that the land and the existing structure on site are maintained and are not in a ruinous or neglected condition.
- 9.25 Whilst the appellant's comments are noted, it was apparent from the site visit, that large parts of the site remain in a neglected condition. The existing shed/warehouse has a dilapidated appearance and has been subject to vandalism with graffiti evident on the front façade. Furthermore, whilst some works have been undertaken to provide the sports facilities, large areas of the site remain as undeveloped hard standing with an unfinished surface. There was extensive evidence of building debris/rubbish on the site.
- 9.26 With regard to the hoarding, I would note that no evidence has been submitted by the appellant to demonstrate that this structure has the benefit of planning permission. I refer the Board to Schedule 2, Part 1, Class 16 of the Planning and Development Regulations 2001 (as amended). This states:

*Class 16*

*“The erection, construction or placing on land on, in, over or under which, or on land adjoining which, development consisting of works (other than mining) is being or is about to be, carried out pursuant to a permission under the Act or as exempted development, of structures, works, plant or machinery needed temporarily in connection with that development during the period in which it is being carried out.”*

*Conditions and Limitations*

*“Such structures, works, plant of machinery shall be removed at the expiration of the period and shall be reinstated save to such extent as may be authorised or required by a permission under the Act.”*

- 9.27 The erection of hoarding on a site is normally considered exempt if it is erected on a temporary basis in connection with a development that is being carried out or about to be carried out. In this instance, there is no development on the site being carried out or about to be carried out and the



extant permission pertaining to the site under application reference 1569/04 has expired. Under Section 6 (7) of the Urban Regeneration and Housing Act 2015 it is stated:

*“In determining for the purposes of this Part whether a site was vacant or idle for the duration of the 12 months concerned a planning authority, or the Board on appeal, shall not have regard to any unauthorised development or unauthorised use.”*

9.28 Whilst the new hoarding along Benburb Street is noted, it has not been demonstrated by the appellant that this structure has the benefit of planning permission. Furthermore, notwithstanding its erection, the site in my view remains in a dilapidated condition and accommodates a substantial shed/warehouse which is in a neglected condition. In this context, I consider that the site as a whole has an adverse effect on existing amenities, reduces the amenity provided 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 and has an adverse effect on the character of the area.

#### **Antisocial behaviour was or is taking place in the area**

9.29 As noted above, there is evidence that anti-social behaviour has taken place on the site. Extensive graffiti was present on both the storage shed and the remaining concrete boundary walls. I am satisfied that this vandalism has arisen due to the vacant and neglected condition of the site.

#### **There has been a reduction in the number of habitable houses, or the number of people living in the area**

9.30 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.

9.31 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 behaviour and thus can be categorised as a vacant site as defined by Section 5(1)(b).

#### **(b) Levy Calculation**

9.32 The appellant has not appealed the levy calculation. A Notice of Determination of Market Value was issued to Benburb Street Property Company Limited on the 31<sup>st</sup>

May 2018 stating that the valuation placed on the site is €8.65m. .

9.33 A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to Benburb Street Property Company Limited on the 12th of February 2019 for the value of €259,500.

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

## 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,
- (d) The neglected condition of the site and shed/warehouse which detracts from the residential amenities of the area,
- (e) The evidence of antisocial behaviour having taken place on the site,
- (f) Due to the short term, temporary and ad-hoc nature of the existing recreational and sporting facilities on the site, the site is still determined to be in a vacant condition,
- (g) That the majority of the site is vacant

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

(i) 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.

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**Erika Casey**

**Senior Planning Inspector**

**19th July 2019**