



An
Bord
Pleanála

Inspector's Report ABP-306947-20

Type of Appeal	Appeal against a Section 18 Demand for Payment.
Location	Nos. 519-533 North Circular Road, Dublin 1 (otherwise known as Bakers Yard, Portland Road).
Planning Authority	Dublin City Council.
Planning Authority VSL Reg. Ref.	VS/0105.
Site Owner	Irish Residential Properties REIT Plc.
Date of Site Visit	9 December 2020.
Inspector	Stephen Rhys Thomas.

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 2019 amounting to €155,050 for vacant site lands at Nos. 519-533 North Circular Road, Dublin 1 (otherwise known as Bakers Yard, Portland Road) and identified as VS0105. The appeal site has one stated registered owner Irish Residential Properties REIT Plc.
- 1.2. A Notice of Proposed Entry on the Vacant Sites Register was issued to Irish Residential Properties REIT Plc on the 19 June 2017. On the 28 July 2017, the Notice of Entry on the Vacant Sites Register was issued to Irish Residential Properties REIT Plc. The section 7(3) notice was appealed to the Board on the 23 August 2017. On the 1 December 2017, the Board confirmed the notice and determined that the site is a vacant site within the meaning of the Act.
- 1.3. A valuation pertaining to the site was issued by Dublin City Council on the 31 May 2018. The value of the subject site is stated to be €2,215,000. A Section 11(1) Notice was issued on the 31 May 2018, that stated the site remained on the register and gave its valuation. A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to Irish Residential Properties REIT Plc on the 12 February 2019 for the value of €66,450. A second Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to Irish Residential Properties REIT Plc on the 24 February 2020 for the value of €155,050,000.
- 1.4. The appellant (Irish Residential Properties REIT Plc) has appealed the Demand for Payment Notice issued pursuant to Section 15 of the Urban Regeneration and Housing Act.

2.0 Site Location and Description

- 2.1. The subject site is located at 519-533 North Circular Road, Dublin 1, in the north inner city of Dublin. The site can be accessed directly from the North Circular Road and Portland Street North. At present the entire site is under construction for apartments and works have reached the upper floors of the development.

3.0 Statutory Context

3.1. Urban Regeneration and Housing Act 2015 (as amended).

3.1.1. The site was entered onto the register subsequent to a Notice issued under Section 7(1) of the Act that stated the PA was of the opinion that the site referenced was a vacant site within the meaning of Section 5(1)(a) of the Act. A section 7(3) Notice was issued 28 July 2017 and the site was subsequently entered onto the register on that date.

3.1.2. 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 to the Board within 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.

4.0 Development Plan / Planning History

4.1. The Dublin City Development Plan 2016-2022 is the operative development plan. The site is located on lands that are subject to zoning objective Z10 – ‘to consolidate and facilitate the development of inner city and inner suburban sites for mixed-use development of which office, retail and residential would be the predominant uses’.

4.2. 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.

4.3. **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

- 4.4. **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.
- 4.5. **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.
- 4.6. **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.

4.7. **Planning History**

4.7.1. Subject site VSL History

PL29E.VV0028 - Vacant Site Levy - Appeal S.9. Notice Confirmed on the 1 December 2017.

4.7.2. Other planning history on the site.

PA reference **4458/17**. Permission for the demolition of the existing vacant motor garage showrooms (c.2,211 m²) and the construction of a mixed-use scheme of 6-7 storeys in height (c.6,752 m²) arranged around a central courtyard of communal open space at 1st floor level (c. 594 m²). The uppermost floor of the building will be set back onto the North Circular Road. The development will comprise 3 no. retail units, 33 no. car parking spaces including 2 no. universal access spaces, 86 no. bicycling parking spaces, bin stores, plant rooms and an ESB substation at ground floor level, with 5-6 storeys of apartment units above comprising 10 no. 1-bedroom units, 40 no. 2-bedroom units and 11 no. 3-bedroom units, with private balconies at each floor level. Vehicular access to the site will be via a new entrance onto Portland Street North. The development will also include an external deck access to the 2nd and 3rd floors of the building to the eastern/courtyard elevation which will connect to the existing external deck access at these levels within the adjacent mixed-use scheme to the north of the site (known as Bakers Yard). The development will also include piped infrastructure and ducting; roof plant; changes in level and all associated site development works above and below ground. Final Grant 31 August 2018.

PA reference **2757/13**. Permission for 55 apartment units. September 2013.

5.0 **Planning Authority Decision**

5.1. **Register of Vacant Sites Report:**

- 5.1.1. Register of Vacant Sites Report: Site is zoned 'to consolidate and facilitate the development of inner city and inner suburban sites for mixed-use development of which office, retail and residential would be the predominant uses' (Z10). The site is

in an area which is a key route into the city and its condition is having an adverse effect on the character of the area. The site is considered vacant or idle. Site should be included on the VSR. Site inspection 19/05/16.

5.2. Planning Authority Notices:

- 5.2.1. A Notice of Proposed Entry on the Vacant Sites Register was issued to Irish Residential Properties REIT Plc on the 19 June 2017.
- 5.2.2. On the 28 July 2017, the Notice of Entry on the Vacant Sites Register was issued to Irish Residential Properties REIT Plc. This section 7(3) notice was appealed to the Board on the 23 August 2017. On the 1 December 2017, the Board confirmed the notice and determined that the site is a vacant site within the meaning of the Act.
- 5.2.3. A valuation pertaining to the site was issued by Dublin City Council on the 31 May 2018. The value of the subject site is stated to be €2,215,000.
- 5.2.4. A Section 11(1) Notice was issued on the 31 May 2018, that stated the site remained on the register and its valuation.
- 5.2.5. A Notice of Demand for Payment of Vacant Site Levy for 2018 under Section 15 of the Urban Regeneration and Housing Act was issued to Irish Residential Properties REIT Plc on the 12 February 2019 for the value of €66,450.
- 5.2.6. A second Notice of Demand for Payment of Vacant Site Levy for 2019 under Section 15 of the Urban Regeneration and Housing Act was issued to Irish Residential Properties REIT Plc on the 24 February 2020 for the value of €155,050,000.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The landowner has submitted an appeal to the Board, against the decision of Dublin City Council to retain the subject site on the Register and charge the levy. The grounds of the appeal can be summarised as follows:

- Background – planning application lodged in 2017, permission granted August 2018. Demolition works commenced October 2018 (AF1 form attached). Asbestos on site (confirmed January 2017), its removal required special measures during the latter part of 2018. Final removal of all asbestos occurred at Q3 2019. Ground condition surveys were carried out in March

2019, hazardous contaminants were found to be present including additional asbestos, final removal of all dangerous materials was carried out during June and July 2019. Construction activity commenced February 2020.

- Before construction could commence, extensive preliminary work was required. Given the existence of so many contaminants on site, the site should not have been considered a vacant site in the first place. Under section 6(5)(c) of the 2015 Act, the site was not suitable for housing because the presence of contaminants on site gave rise to a 'thing' affecting the physical character of the site that would affect the provision of housing. The site was contaminated (asbestos and other contaminants) for the period concerned and during its removal, to render it unfit for human habitation. The site was and is therefore not in accordance with section 5(1)(a)(ii) of the 2015 Act.
- During 2018 and 2019 significant construction related activity was taking place. This means that the site was not vacant and not in accordance with section 5(1)(a)(iii) of the 2015 Act. The removal of asbestos and other contaminants took place on foot of a planning permission for apartments and took time to complete. ABP-303441-19 is referenced as a case where construction activity had commenced and lifted the site from the register. Whilst section 18(2) of the 2015 Act is noted, the submission of material with this appeal discharges that burden of proof. Thus, for the year 2019, the planning authority must rebut the evidence presented that shows the site was not vacant for the year 2019. ABP-304040-19 is referenced as a case where the planning authority were unable to categorically confirm the status of the site during the relevant period. If the planning authority had visited the site during November 2018, they would have observed construction related activity.
- The appellant seeks to have the demand for payment cancelled for the years 2018 and 2019.

The appellant has attached a number of appendices that include an AF1 Form (demolition works), Asbestos Demolition Survey Report (January 2017), Hazardous

Waste Shipment Forms (Asbestos, various dates from November 2018), Ground survey results, the Board Order and Inspectors Report from 29E.VV.0028

6.2. **Planning Authority Response**

None on file.

7.0 **Assessment**

7.1. **Introduction**

7.2. The Board should note that the appellant has sought to appeal a demand for payment under Section 15 for the years 2018 and 2019, a matter I deal with in much more detail later in this assessment. 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.

7.3. **The site is no longer vacant**

7.3.1. The Board are 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)(a) 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 just 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 in the year concerned, in this case 2019.

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

7.4. **Is it a Vacant Site?**

7.4.1. A Section 7(3) Notice of Entry on the Vacant Sites Register was issued on the 28 July 2017. Subsequently a Section 9 appeal was made to the Board under appeal reference PL29E.VV0028. A detailed assessment as to whether the site constituted a vacant site was carried out by the Reporting Inspector. The Board determined that given the need for housing in the area and the suitability of the site for the provision

of housing as demonstrated by the land use zoning of the Development Plan, the site should be confirmed as a vacant site and remain on the register.

7.4.2. The appellant challenges section 5(1)(a)(ii) and specifically section 6(5)(c) of the 2015 Act, that something did affect the physical condition of the land comprising the site which might affect the provision of housing, and that thing was contaminated land. To be precise, it was the existence of asbestos in building materials and other contaminants that were subsequently discovered after survey work happened prior to the commencement of a planning permission. I find this to be perfectly reasonable, however, at the time of the Board Order to confirm the placement of the site on the register, none of this information was known or at least offered as part of the grounds of appeal in that case. The Board Order to confirm issued on the 1 December 2017 and it now turns out that survey work concluded that asbestos was present on the site January 2017, though removal works didn't commence until November 2018, 3 months after permission was granted. The appellant did not raise the contaminated nature of the site as a grounds of appeal at the time the site was placed on the register. Therefore, neither the Inspector nor the Board could've known that something affected the physical condition of the lands to limit the provision of housing. I would agree that a contaminated site is probably something that would affect the immediate delivery of housing, but something that can be overcome, as the appellant has clearly demonstrated. I do not think that simply because a site is contaminated it can lie vacant and escape placement on the register. It would be quite routine for inner city development sites to undergo some kind of enabling works prior to construction and this might include de-contamination.

7.4.3. I do not intend to recommend that the site should not have been placed on the register in the first place as the entirety of section 5(1)(a) of the 2015 was met at that time. However, I am not satisfied that the site was a vacant site up to the date of the relevant period concerning this current appeal, that is for the year 2019.

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

7.4.4. The appellant has submitted ample evidence to suggest that the subject site was no longer vacant/idle. It is clear that the lands were an active construction site for the year of 2019, this is evidenced by the removal of hazardous material collected on site. The removal of asbestos commenced in the latter part of 2018 and continued

through 2019. I agree with the appellant that the removal of asbestos and other contaminants should be considered activity carried out to enable a permission to be enacted. The planning authority are silent on this fact. According to the appellant the construction of apartments formally commenced February 2020 and on the day of my site visit I observed that construction activity was taking place and that buildings had reached at least the first floor.

- 7.4.5. I am satisfied that the works carried to enable the construction of apartments on the site can be considered as a use for the site in question. The site was no longer a vacant site as defined by section 5(1)(a)(iii)(l) of the 2015 Act (as amended) for the period of 2019, the year that a demand for the value of €155,050,000 was made by the planning authority. I am not satisfied that the lands concerned remained vacant during the relevant time period and the appropriate charge should not be levied.

7.5. **Demand Notice 2018**

- 7.5.1. The appellant has sought to appeal the Demand Notices issued for the year 2018 and 2019, this is not something that the Board can consider. Section 18(1) of the 2015 Act states:

The owner of a site who receives a demand for payment of vacant site levy under section 15 may appeal against the demand to the Board within 28 days after the date of the demand.

In the case of the demand for payment of the year 2019, the appellant has lodged a valid appeal within the requisite time period and the appeal has been accepted. However, in relation to the demand for 2018, the appellant is a year too late. As I understand it, the appellant believes that in relation to changed circumstances for the site, the burden of proof to demonstrate it was no longer vacant can be discharged within this appeal. I think that this is not the case and the Board have no jurisdiction to consider an appeal that is out of time. To be clear, the grounds of appeal with regard to the demand for 2019 stand, however, any appeal made to the Board in relation to 2018 cannot be supported, even if the evidence appears to suggest a levy should not have been charged. The appellant/landowner could have made contact with the local authority and pleaded their case under section 10(1) of the 2015 Act, that states:

The owner of a vacant site that stands entered on the register under section 6(2) shall notify the planning authority in whose functional area the site is located if it is no longer vacant or idle.

It would appear that the appellant did not or has not used this avenue to lift their site from the register and the charge for 2018 will probably stand, however, this is a matter that the planning authority will have to pursue and sort out with the landowner.

7.6. Levy Calculation

7.6.1. As explained under section 7.5 above, I consider only the calculation of the levy for the year 2019. A Notice of Valuation Entered on the Vacant Site Register was issued to Irish Residential Properties REIT Plc on the 31 May 2018 stating that the valuation placed on the site is €2,215,000.

7.6.2. A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to Irish Residential Properties REIT Plc on the 24 February 2020 for the value of €155,050,000.

7.6.3. The levy rate applicable in this instance is 7%. The rate of levy has been increased from 3% to 7% of the market valuation of relevant sites with effect from January 2020, to be applied in respect of sites that were included on vacant site registers in 2019. The levy rate applicable in this instance is 7%. It is evident, therefore, that the levy calculation has been correctly calculated.

7.7. Procedural Matter

7.7.1. The Board should note that the calculation of time limits was adjusted during a period of emergency in the first half of 2020, the Emergency Measures in the Public Interest (Covid-19) Act 2020 refers. This may impact upon any Order that the Board decide to make and the adjustment to any time periods should be duly considered in the context of Section 251A(1) and (2) of the Planning and Development Act 2000 (as amended).

8.0 Recommendation

8.1. 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 20th 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.

9.0 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 site was for the period of 2019 and continues to be an active construction site for the provision of housing and is therefore not a vacant site as defined by section 5(1)(a) of the Urban Regeneration and Housing Act 2015 (as amended),

the Board is not satisfied that the site was a vacant site on the 1st of January 2019 and was a vacant site on 20th 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.

Stephen Rhys Thomas
Senior Planning Inspector

17 December 2020