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Bord  
Pleanála

## Inspector's Report ABP-306967-20

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<b>Type of Appeal</b>	Appeal against a Section 18 Demand for Payment.
<b>Location</b>	Rear of 134-139 Phibsborough Road, Devery's Lane, Phibsborough, Dublin 7.
<b>Planning Authority</b>	Dublin City Council.
<b>Planning Authority VSL Reg. Ref.</b>	VS/0449.
<b>Site Owner</b>	Paul O'Brien.
<b>Date of Site Visit</b>	24 March 2021.
<b>Inspector</b>	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 €28,000 for vacant site lands at the rear of 134-139 Phibsborough Road, Devery's Lane, Phibsborough, Dublin 7 and identified as VS-0449. The appeal site has one stated registered owner Paul O'Brien.
- 1.2. A Notice of Proposed Entry on the Vacant Sites Register was issued to Paul O'Brien on the 8 March 2018. On the 17 May 2018, the Notice of Entry on the Vacant Sites Register was issued to Paul O'Brien. The section 7(3) notice was not appealed to the Board.
- 1.3. A valuation pertaining to the site was issued by Dublin City Council on the 21 January 2019. The value of the subject site is stated to be €400,000. A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to Paul O'Brien on the 26 February 2020 for the value of €28,000.
- 1.4. The appellant (Paul O'Brien) 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 Devery's Lane off Phibsborough Road and to the rear of 134-139 Phibsborough Road. Phibsborough village and Phibsborough Shopping Centre is located in the vicinity. The site is located along the northern edge of a narrow laneway that provides access to a number of commercial properties. A private laneway runs long the northern edge of the site and provides access to the rear of terraced houses along Royse Road.
- 2.2. The site is bound by a galvanised steel fence along Devery's Lane, concrete block wall to sheds along the eastern boundary, palisade fencing to the rear laneway of Royse Road and a hedgerow to the west. The site interior is level and comprises a combination of hardstanding and overgrown ground with a small block building and a number of other steel objects.

### 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 17 May 2018 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 Z1 – ‘to protect, provide and improve residential amenities’.

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.

PA reference number **3573/17** - Demolition of existing single storey building 174m<sup>2</sup> and construction of detached 3 storey building comprising ground floor office 106m<sup>2</sup> & 2 storey own door duplex apartments ( 3 bed) with balconies at first and second floor. Widening of Devery's Lane for new footpaths, hammerhead, street lighting and 2 car parking & 5 bicycle spaces. Construction of detached 3 storey residential building comprising 4 no. ground floor garden apartments ( 2 beds ) and 4 no. 2 storey duplex apartments ( 3 beds ) with balconies at first floor, bin storage area & 15 no. bicycle spaces, landscaping and associated works. Final Grant 8 November 2017.

## 5.0 Planning Authority Decision

### 5.1. Register of Vacant Sites Report:

5.1.1. Register of Vacant Sites Report is not on file.

### 5.2. Planning Authority Notices:

5.2.1. A Notice of Proposed Entry on the Vacant Sites Register was issued to Paul O'Brien on the 8 March 2018.

5.2.2. On the 17 May 2018, the Notice of Entry on the Vacant Sites Register was issued to Paul O'Brien, no appeal was made to the Board in relation to this notice.

5.2.3. A valuation pertaining to the site was issued by Dublin City Council on the 21 January 2019. The value of the subject site is stated to be €400,000.

5.2.4. A Notice of Demand for Payment of Vacant Site Levy for 2019 under Section 15 of the Urban Regeneration and Housing Act was issued to Paul O'Brien on the 26 February 2020 for the value of €28,000.

## 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:

- Market Value – the site is landlocked and has a nominal value. The site forms part of a larger overall site that has planning permission in order to allow access.
- A third of the subject site is subject to a leasehold, the freehold title owner cannot be located and so the title is deficient. Half the overall site cannot therefore be developed without consent. A new planning application will be lodged for a much smaller scheme on the subject lands.
- Market Valuation – the true market value of the site is around €50,000 as calculated by DNG. DCC did not include the particulars of how they calculated the market value when the valuation was notified to the owner.
- Levy Amount – the proper levy amount should not exceed €3,500, as 7% of the true value of the site.

The appeal is accompanied by a copy of the front page of lease, map of affected area of lease, a professional valuation (DNG)

## 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 year 2019. 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 17 May 2018. No appeal was made to the Board and the owner does not dispute the vacant nature of the site. On the day of my site visit the lands had the appearance of having had no beneficial use for some time. The appellant makes the point that the site cannot be developed in line with a planning permission because the portion to the front of the site is in separate and unknown ownership. The site cannot therefore be developed for housing at present but a new application will be lodged in the future for the site that is in single ownership.

7.4.2. I can see from the Dublin City Vacant Sites Register that this site is one of two in Phibsborough and not connected to the front portion of the site along Phibsborough Road. This is logical, given that the front portion is in commercial use. In terms of the entire property ownership and planning permission, I can see from the planning application form of p.a. reference 3573/17, that the name of the applicant and owner of the site was Danestone Limited. In this instance the entire site was declared as in single ownership under Danestone Limited and that the company directors were listed as Paul O'Brien and Paul Newman. I note the appendices submitted with this appeal that claim to detail the uncoupled nature of site ownership, but the copies submitted are of poor quality and not conclusive. I do note however, that two separate 'freehold' land parcels are detailed on maps publicly available on the Property Registration Authority website. On balance, it may well be the case that the ownership of the entire site is in question, however, this does not remove the power of the owner of the appeal site to make a fresh planning application unencumbered by legal issues. I note that the appellant makes this very case but the 2015 Act does not indicate that administrative activity in relation to a site, such as obtaining planning permission, should be considered to deem a site not vacant or idle.

7.4.3. It appears that the site is situated in an area in which there is a need for housing, the site is suitable for housing and the majority of the site is vacant or idle. I am satisfied that the site has been properly entered on to the register and no party disputes the nature and character of the site, it is therefore a vacant site for the purposes of the Act.

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

7.4.4. The appellant has not submitted any evidence to suggest that the subject site was no longer vacant/idle. The site therefore remains to be a vacant site and was so for the relevant period, 2019 and the appropriate charge should be levied.

## 7.5. Levy Calculation

7.5.1. A Notice of Valuation Entered on the Vacant Site Register was issued to Paul O'Brien on the 21 January 2020 stating that the valuation placed on the site is €400,000. No evidence from the appellant has been submitted to show that this valuation was appealed to the Valuation Tribunal. The appellant has challenged the valuation in this appeal and submitted an independent professional valuation that estimates the value as of the 1 January 2019 to be in the region of €50,000. This is based upon a complicated leasehold issue and the inability to implement a planning permission for the subject site and adjacent lands. Though the appellant may have a strong case to make in relation to the market value of the site, the time for that appeal has passed. At the date of the valuation notification (21 January 2019), the appellant should have appealed directly to the Valuation Tribunal within 28 days. This may or may not have happened. In any case, unfortunately for the appellant, the Board has no jurisdiction to adjudicate a determination of market value, that is for the Valuation Tribunal to do.

7.5.2. A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to Paul O'Brien on the 26 February 2020 for the value of €28,000. The appellant challenges this calculation on the basis that the true value of the site is in the region of €50,000 and so the levy charged for 2019 should not exceed €3,500. As I have already stated above, the Board has no role to play in the determination of site value but can only make a decision based upon the amount of levy calculated, section 18(4) as follows:



*Where the Board determines that the amount of the levy has been incorrectly calculated in respect of a vacant site it shall give written notice to the planning authority of the correct amount who shall amend the demand made in respect of that year in accordance with the revised amount.*

7.5.3. In this instance the valuation of the site as determined by the planning authority and unchallenged to the Valuation Tribunal stands, that is €400,000 and the resultant charge shall be €28,000.

7.5.4. 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.

#### **7.6. Procedural Matter**

7.6.1. 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 confirm that the site was a vacant site as of the 1 of January 2019 and was a vacant site on 23 March 2020, 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.

#### **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 need for housing in the area, the site is suitable for the provision of housing as demonstrated by the residential land use zoning for the area, and that insufficient reason is put forward to cancel entry on the Vacant Sites Register,
- (e) That the majority of the site is and was vacant for the period concerned,
- (f) The amount of the levy has been correctly calculated at 7% of the site value in 2019,
- (g) There has been no change in the ownership of the site during the period concerned, 2019,

the Board is satisfied that the site was a vacant site on the 1 of January 2019 and was a vacant site on 23 March 2020, 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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Stephen Rhys Thomas  
Senior Planning Inspector

31 March 2021