



An
Bord
Pleanála

Inspector's Report ABP-306969-20

Type of Appeal	Appeal against a Section 18 Demand for Payment.
Location	Vacant site at Nos. 28-31 Benburb Street, Dublin 7.
Planning Authority	Dublin City Council.
Planning Authority VSL Reg. Ref.	VS/0020
Site Owner	EasyHotel plc.
Planning Authority Decision	Demand for Payment.
Date of Site Visit	22 June 2021.
Inspector	Stephen Rhys Thomas

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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 €168,000 for vacant site lands at 28-31 Benburb Street, Dublin 7 and identified as VS/0020.
- 1.2. The appeal site has one stated registered owner EasyHotel plc.
- 1.3. A Notice of Proposed Entry on the Vacant Sites Register was issued to Dublin Corporate Apartments Limited on the 13 October 2017. On the 28 November 2017, the Notice of Entry on the Vacant Sites Register was issued to Dublin Corporate Apartments Limited. This section 7(3) notice was appealed to the Board and confirmed. A section 11(1) Notice to Owner of Site Entered on Vacant Sites Register, issued on the 31 May 2018.
- 1.4. A valuation pertaining to the site was issued to Dublin Corporate Apartments Limited by Dublin City Council on the 31 May 2018. The value of the subject site is stated to be €2,400,000. A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to Easyhotel Ireland Limited on the 24 February 2020 for the value of €168,000. The appellant (EasyHotel 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 site is located in a central part of Dublin city. The Luas light rail runs along Benburb Street in front of the site. The lands have been cleared of their former buildings and are currently under a significant amount of construction with the entire site cleared and a number of excavations. A tower crane has been erected and construction activity continues apace. The site boundaries to Benburb Street and Wood Lane, comprise construction hoarding and wire mesh fencing. The boundaries to the adjacent lands are not defined as the wider lands at this location are under construction.

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)(b) of the Act. A section 7(3) Notice was issued 28 November 2017 and after appeal 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.

3.1.3. Section 17 of the Act states

(1) Notwithstanding sections 15 and 16, where in any year there is a change in ownership of a vacant site the amount of vacant site levy to be charged in respect of that site for that year, and for the preceding year, shall be zero.

Subsections set the detail and exceptions in relation to change of ownership.

4.0 Development Plan Policy

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 Z5 – City Centre – ‘To consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity.’.

4.2. 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.

- 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 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.
- 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.

5.0 Planning History

5.1. Subject site VSL Appeal History

ABP-300472-17 - Notice of proposed entry on the Vacant Sites Register, confirmed April 2018.

5.2. Planning history on the site.

PA reference **3655/19** and ABP ref **ABP-306628-20**. Alterations to previously approved permission PL29N.247314 for a hotel development. Contribution Conditions Appeal Decided August 2020.

PA reference **2692/16** and ABP ref **PL29N.247314**. Permission for the demolition of derelict houses on site, provision of a three to six storey over basement level hotel. February 2017.

6.0 Planning Authority Decision

6.1. Register of Vacant Sites Report:

Register of Vacant Sites Report: The site is zoned under objective Z5. 'To consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity'. The site is classified as regeneration land and has been vacant or idle for the last 12 months. The site is in an area which is highly visible and prominent location in the city and has an adverse effect on the amenity and character of the area. The site is considered vacant or idle. Site should be included on the VSR.

This report was taken from the initial section 9 appeal documentation.

6.2. Planning Authority Notices:

- 6.2.1. Dublin City Council advised the site owner that the subject site (Planning Authority site ref. VS/0020) is now liable for a payment of 7% of its valuation and hence the levy for 2019 is €168,000 dated 24 February 2020. Payment terms and methods are outlined.

- 6.2.2. A Notice of Determination of Market Value was issued to Dublin Corporate Apartments Limited on the 31 May 2018 stating that the valuation placed on the site is €2,400,000 and instructions to make an appeal to the Valuations Tribunal.
- 6.2.3. A section 11(1) Notice to Owner of Site Entered on Vacant Sites Register and Levy to be Charged was issued to Dublin Corporate Apartments Limited on the 31 May 2018.
- 6.2.4. A section 7(3) Notice issued on the 28 November 2017, advising the owner that their site had been placed on the register.
- 6.2.5. A section 7(1) Notice issued on the 13 October 2017, advising the owner that their site had been identified as a vacant site and invited submissions, accompanied by a site map.

7.0 The Appeal

7.1. Grounds of Appeal

- 7.1.1. 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:
- The appellant states that works began on site in October 2019, works included demolition on foot of a planning permission 2692/16. Commencement Notice issued 30 September 2019. Archaeological monitoring continued throughout 2019. Preliminary engagement with planning authority about making changes to the permitted development began in November 2018 and were ongoing throughout 2019, leading to the works described above and the lodgement of a planning application for amendments to the original permission.
 - The demolition works have addressed the visual blight, danger and antisocial behaviour that was taking place on site. The site has been cleared, fenced with see through fencing and all of these works occurred in 2019 to implement a planning permission and comply with an Enforcement Notice. Section 6(6)(a) and (b) of the 2015 Act no longer apply.

- Given the ongoing construction of housing units in the immediate vicinity, the condition of the site is not having an effect on the number of habitable houses in the area, section 6(6)(c) of the 2015 Act is not met.
- Works were ongoing throughout 2019 and at the date that the appeal was made.

The appeal is accompanied by a large number of appendices that include: the 2692/16 Grant of Permission, Correspondence from the Dangerous Buildings Section of the Council dated 9 November 2018, Text message correspondence between the appellant's Architect and the Garda Siochana, Letter from Tyndall Architecture notifying the Council of an intention to lodge a commencement notice dated 31 January 2019, Email from the Council noting a Bond not necessary for demolition works, Request that further Archaeological Monitoring not needed dated 15 August 2019 and original archaeological report (2017), email from the Council stating demolition could commence dated 18 September 2019, BCMS application form dated 30 September 2019, site waste management plan dated period of 1 April 2019 to 30 May 2019, appointment of demolition contractors dated 17 September 2019, Asbestos waste receipt 16 December 2019, site photographs, fire safety certificate dated 24 October 2019, DAC dated 15 October 2019, and an email confirming no further archaeological mitigation required dated 6 March 2020.

- Note that change of ownership to EasyHotel occurred in October 2018, no charge levied for that year (2018).

7.2. **Planning Authority Response**

None.

7.3. **Further Response**

None sought.

8.0 **Assessment**

8.1. **Introduction**

8.2. 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.

8.3. The site is no longer vacant

8.3.1. 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)(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.

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

8.4. Is it a Vacant Site?

8.4.1. A Section 7(3) Notice of Entry on the Vacant Sites Register was issued on the 28 November 2017. Subsequently a Section 9 appeal was made to the Board under appeal reference ABP-300472-17. A detailed assessment as to whether the site constituted a vacant site was carried out by the Reporting Inspector. The Board determined that because of the site's ruinous and neglected condition, its adverse effects on existing amenities and reduction of the amenity provided by existing infrastructure and facilities (within the meaning of section 48 of the Planning and Development Act, 2000, as amended) in the area and that the site has adverse effects on the character of the area, the site should be confirmed as a vacant site and remain on the register. I do not intend to revisit the decision to place the site on the register, no parties dispute whether the site should have been placed on the register in the first place.

8.4.2. A charge was not levied by the Council for the year 2018, because the ownership of the site changed hands and so under section 17 of the 2015 Act, the levy charge was zero.

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

8.4.3. The crux of the matter for the appellant and as they put it, they carried out so much preliminary and demolition works in 2019, that the site should no longer be

considered a vacant site in terms of the 2015 Act. As noted above, due to a change in ownership to the benefit of CityHotels in 2018, the levy for that year was zero. The appellant maintains that since a change of ownership in 2018 and given that a different business plan was being devised for the site, they wished to make amendments to the original permission. Work started in earnest at the end of 2018 and well in to 2019 to coordinate with the planning authority to discuss and pre-plan for the lodgement of an amending planning application. The new planning application was lodged August 2019 and finally granted after appeal a year later, August 2020. Meanwhile, all sorts of preliminary works such as compliance with conditions (mainly archaeology matters), commencement notice, appointment of waste contractors and so on all took place during the year. All of these preliminary activities finally culminated with demolition works commenced at the back end of 2019 and completed 4 December 2019. The site was fenced, secured and readied for construction works to begin. On the day of my site visit, I observed construction works well underway, with site clearance evident, some excavations and the erection of a tower crane.

- 8.4.4. The appellant points out that it is the aim of the Urban Regeneration and Housing Act to address sites in need of renewal and to prevent them lying idle or remaining vacant, I agree. The spirit of the Act is to affect change, address vacancy and in the context of this site, assist with renewal and regeneration. All of these things occurred in 2019, the year that a charge for the levy had been made by the planning authority. In many appeals, the appellant makes the case that ongoing administrative activities like site surveys, pre-planning discussions and the lodgement of a planning application should all protect a site from placement on the register. The 2015 Act does not make allowance for these kinds of activities and neither I nor the Board have accepted this as a good reason to remove a site from the register. However, in this case the appellant has gone further and carried out actual demolition works, all leading to the construction activity I observed on site. A good parallel case to consider is a similar section 18 appeal, also in the city centre. Where a long run in period that involved remediation (disposal of asbestos) and demolition before actual construction work could commence, before the site was eventually removed from the register on appeal, ABP-306947-20 refers.

8.4.5. This is not a case where, the owner is procrastinating and attempting to escape the levy by merely attending to the site from an administrative and paper trail perspective. I can appreciate that a technically complex city centre site, such as this requires a certain degree of preliminaries to be undergone, especially when ownership had changed. The new owner was not tardy in attending to what would make the site work from a viability perspective. Furthermore, when matters were settled with the Council, construction contractors and before a new planning application was decided, the owner went ahead with demolition works to make the site safe and free from antisocial behaviour, that is to be commended. Now the site is under full construction and that is positive given the public health limitations that have affected nearly all construction activity throughout 2020 and into 2021.

8.4.6. Within the terms of the 2015 Act the Board may determine whether the site was a vacant site on the 1 January in the year concerned or was no longer a vacant site on the date on which the appeal was made. The appeal was lodged 23 March 2020. Under section 18(3) the 2015 Act states:

Where the Board determines that a site was no longer a vacant site on 1 January in the year concerned, or is no longer a vacant site on the date on which the appeal under this section is made, it shall give written notice to the planning authority who shall cancel the entry on the register in respect of that site and shall cancel the demand made in respect of that year.

8.4.7. By placement of an 'or' between the 1 January and the date the appeal was made, the Board may determine the appeal on either basis. In this instance the latter is the case and during 2019 and into 2020 the site was no longer a vacant site. I think that allowance may be made in relation to public health limitations that may have prevented further construction work during 2020. In this regard, the Board could note the calculation of time limits that were adjusted during a period of emergency in the first half of 2020, the Emergency Measures in the Public Interest (Covid-19) Act 2020 refers.

8.4.8. On balance, I am satisfied that significant works had been carried out during 2019 to enable the site to be removed from the register, site demolition, remediation and securely fenced. During 2019, the site was active and so not vacant, it was neither ruinous or neglected, antisocial behaviour had ceased and there had not been a

reduction in habitable houses or people living in the area. I accept that section 5(1)(b) as expanded upon by section 6(6)(a), (b) and (c) of the 2015 Act (as amended) have been met and the site was no longer a vacant site in 2019 and was no longer a vacant site the day on which the appeal was made.

8.5. Levy Calculation

- 8.5.1. A Notice of Determination of Market Value was issued to Dublin Corporate Apartments Limited on the 31 May 2018 stating that the valuation placed on the site is €2,400,000. No evidence from the appellant has been submitted to show that this valuation was appealed to the Valuation Tribunal.
- 8.5.2. A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to EasyHotel Ireland Limited on the 24 February 2020 for the value of €168,000.
- 8.5.3. 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.
- 8.5.4. The applicable rate is 7% and it is evident, therefore, that the levy calculation has been correctly calculated. The Demand Notice issued under section 15 of the 2015 Act correctly states the levy due.

9.0 Recommendation

- 9.1. 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 23 March 2020, the date on which the appeal was made. The demand for payment of the vacant site levy under Section 15 of the Urban Regeneration and Housing Act 2015 is, therefore, cancelled. In accordance with Section 18(4) of the Urban Regeneration and Housing Act 2015 (as amended), the Board confirm that the amount of the levy has been correctly calculated in respect of the vacant site.

10.0 Reasons and Considerations

Having regard to:

- (a) The information placed before the Board by the Planning Authority in relation to the entry of the site on the Vacant Sites Register,
- (b) The grounds of appeal submitted by the appellant,
- (c) The report of the Planning Inspector,
- (d) The demolition activities that took place during 2019, the secure and fenced condition of the site during 2020 and the ongoing construction activities that have and are taking place on the site,

the Board is not satisfied that the site was a vacant site on the 23 March 2020, 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

07 July 2020