



An
Bord
Pleanála

Inspector's Report ABP-306970-20

Type of Appeal	Appeal against a Section 18 Demand for Payment.
Location	Vicar Street (to the rear of Vicar St. Music Venue), Dublin 8.
Planning Authority	Dublin City Council.
Planning Authority VSL Reg. Ref.	VS/0070.
Site Owner	Henry A. Crosbie.
Date of Site Visit	24 March 2021.
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 €70,000 for vacant site lands at Vicar Street (to the rear of Vicar St. Music Venue), Dublin 8 and identified as VS-0070. The appeal site has one stated registered owner Henry A Crosbie.
- 1.2. A Notice of Proposed Entry on the Vacant Sites Register was issued to Henry A Crosbie on the 19 June 2017. On the 28 July 2017, the Notice of Entry on the Vacant Sites Register under section 5(1)(b) was issued to Henry A Crosbie. 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 31 May 2018. The value of the subject site is stated to be €1,000,000. 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 Henry A Crosbie on the 24 February 2020 for the value of €70,000.
- 1.4. The appellant (Henry A Crosbie) 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 Vicar Street in Dublin 8 and comprises the footprint of a large warehouse. The site is rectangular in shape, to the west is Molyneux Yard and to the east is Vicar Street. The site is located across a small enclosed yard adjacent to the Vicar Street Music Centre and backs onto a large play area, laid out as hard surface basketball courts and soccer pitch. The large warehouse is of concrete construction with metal cladding at the upper level. The warehouse building has a variety of graffiti at the lower levels and is in a generally fair condition of repair.
- 2.2. Apartments at St Michael House are located on the east side of Vicar Street and further blocks are to the south and east along with two storey terraced houses. To the west of the site is located St Catherine's Church and Hall, Molyneux Yard along with other properties with frontage onto Meath Street.

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 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. Development Plan Policy

4.1.1. 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.’. The site is also located within an Architectural Conservation Area. The location is in the zone of archaeological potential for Dublin City. (DU018-21).

4.1.2. The site location is within the area of SDRA 16 (Liberties and Newmarket Square) in which the site and lands to the east adjoining Francis Street and Carmanhall is identified as an opportunity site.

4.1.3. One of the key strategies of the plan, as set out in section 4.4 is the creation of a consolidated city, whereby infill sites are sustainably developed and new urban

environments are created, by actively promoting active land management, a key component of which is the vacant site levy.

- 4.1.4. Section 2.2.8.4 of the plan states that in accordance with the Urban Regeneration and Housing Act 2015, it is a key pillar of the development plan to promote the development and renewal of areas, identified having regard to the core strategy, that are in need of regeneration, in order to prevent: (i) adverse effects on existing amenities in such areas, in particular as a result of the ruinous or neglected condition of any land, (ii) urban blight and decay, (iii) anti-social behaviour or (iv) a shortage of habitable houses or of land suitable for residential use or a mixture of residential and other uses
- 4.1.5. Section 14.9 of the Development Plan 2016-2022 states that the VSL will apply to lands zoned Z1, Z2, Z3, Z4, Z5, Z6, Z7, Z8, Z10, Z12 and Z14.
- 4.1.6. 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.
- 4.1.7. 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.

4.2. Planning History

4.2.1. Subject site.

ABP-**303646**-19 and PA reference number **3972/18** - Demolition of buildings & construction of hotel. May 2019.

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 Henry A Crosbie on the 19 June 2017.

5.2.2. On the 28 July 2017, the Notice of Entry on the Vacant Sites Register under section 5(1)(b) was issued to Henry A Crosbie, 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 31 May 2018. The value of the subject site is stated to be €1,000,000.

5.2.4. 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 Henry A Crosbie on the 12 February 2019 for the value of €30,000.

5.2.5. 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 Henry A Crosbie on the 24 February 2020 for the value of €70,000.

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:

- The warehouse is part of the Vicar Street Venue and is in use every day for truck loading and gear storage. This information has been conveyed to the Council several times.
- The warehouse is due for demolition as part of a planning permission for a hotel.

The appeal is accompanied by the demand details from the City Council.

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)(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 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 under section 5(1)(b) was issued on the 28 July 2017. No appeal was made to the Board; however, the owner plainly states that the warehouse is constantly in use to load and unload trucks and store gear associated with the Vicar Street music venue. This is a plausible scenario. Further, the appellant states that they have conveyed this information to the Council on a number of occasions but without response, the site remains on the register. The planning authority can remove a site from the register, as per section 10 of the 2015 Act (as amended):

(1) 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.

(2) If, at any time, a planning authority is satisfied that a site that stands entered on the register under section 6(2) is no longer a vacant site it shall cancel the entry on the register in respect of that site.

7.4.2. Given that the owner has appealed a demand for payment notice, it is clear that the planning authority do not accept the owner's contention that the site is in constant use and have not removed the site from the register under section 10 of the Act. The planning authority have stated in correspondence to the Board (dated 10 June 2020) that they have tried to arrange site visits without success and have not seen evidence of use on the site, this, they state, formed the basis for placing the site on the register.

7.4.3. It would have been helpful to have a record of correspondence or a list of communications from the owner to the planning authority and vice versa to verify attempts at removing the site from the register. It is important to note that the burden of proof showing that the site was no longer vacant is on the owner of the site. But even without copies of correspondence I find that it is quite likely that the site is and was in use for the purposes described by the appellant. Even though on the date of my site visit during a Level 5 Restriction of the Plan for Living with COVID-19 (music

venues have been closed since at least March 2020), I saw no activity on site. The Board should note that the appeal was lodged on the 23 March 2020, during a period of public health lockdown and so was closed and continues to be closed for public performances.

- 7.4.4. In addition, I note that the planning authority have not responded to the current appeal. The site, has been entered on to the register based upon the planning authority's roadside observations and the lack of any documentary evidence to the contrary from the owner. I am minded to reference the 2015 Act, that states the burden of proof is very much on the owner. In this instance, the owner makes a simple and implied obvious assertion that the site is and was in constant use associated with the adjoining music venue. At the time of placing the site on the register the planning authority required more information and tried to obtain it, but even without evidence placed the site on the register. This has brought down a significant burden on the site, in the form of a levy, that is currently the subject of this appeal.
- 7.4.5. I note that the lands are marked out for regeneration and so the site was entered on to the register under section 5(1)(b). As I have concluded that the site was and is probably in use and so not vacant, criteria 5(1)(b)(ii) should not apply. Irrespective, I find that though the warehouse building is a little worn out and covered with graffiti in areas that can be easily reached, it was and is not necessarily affecting the amenity of the area, such as it is.
- 7.4.6. On balance, it is quite likely that the warehouse building provides a suitable place to load and unload a vehicle and provide ample room to store entertainment related equipment and thus not vacant for the period concerned. I am not satisfied that the site has been properly entered on to the register, it is therefore not a vacant site for the purposes of the Act.

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

- 7.4.7. The appellant states that site is in constant use ancillary to the Vicar Street music venue. This is a rational explanation for the use of the building whilst concerts and performances are being carried out. As concerts and performances occur throughout the year is very likely the building was in constant use for the period concerned,

2019. I see no reason to apply the charge in this instance and the site should be removed from the register.

7.5. Levy Calculation

- 7.5.1. A Notice of Determination of Market Value was issued to Henry A Crosbie on the 31 May 2018 stating that the valuation placed on the site is €1,000,000 (one million euro). No evidence from the appellant has been submitted to show that this valuation was appealed to the Valuation Tribunal.
- 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 Henry A Crosbie on the 24 February 2020 for the value of €70,000.
- 7.5.3. 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.
- 7.5.4. 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.

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 cancel the Notice of Demand for Payment of Vacant Site Levy as the site was not a vacant site as of the 1 of January 2019 and was not a vacant site on 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.

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 a building in use for the purposes of supporting a music venue and is therefore not a vacant site as defined by section 5(1)(b) of the Urban Regeneration and Housing Act 2015 (as amended),

the Board is not satisfied that the site was a vacant site on the 1 of January 2019 and was a vacant site on 23 of 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

31 March 2021