



An
Bord
Pleanála

Inspector's Report ABP-306990-20

Type of Appeal	Appeal against a Section 18 Demand for Payment.
Location	51-52 Charles Street Great, Dublin 1.
Planning Authority	Dublin City Council.
Planning Authority VSL Reg. Ref.	VS/1080.
Site Owner	St Michael's House Properties.
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 €189,000 for vacant site lands at 51-52 Charles Street Great, Dublin 1 and identified as VS-1080. The appeal site has one stated registered owner St Michael's House Properties.
- 1.2. A Notice of Proposed Entry on the Vacant Sites Register was issued to St Michael's House Properties on the 8 March 2018. On the 17 May 2018, the Notice of Entry on the Vacant Sites Register was issued to St Michael's House Properties. The section 7(3) notice was 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 €2,700,000. A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to St Michael's House Properties on the 26 February 2020 for the value of €189,000.
- 1.4. The appellant (St Michael's House Properties) 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 at 51-52 Charles Street Great, Dublin 1, in the northern inner city. The site also adjoins Charles Lane and Tyrrell Place and shares a boundary with the Pavee Point Travellers Centre to the east.
- 2.2. The site is level and comprises a grassed forecourt with a gravelled area to the side. There is a collection of buildings on the site and these comprise flat roof and pitched roofed commercial type buildings in very poor repair. The buildings front directly on to Tyrrell Place and comprise a flat roof and rendered structure, a gable fronted structure with brick surround semi-circular window and a half render/half red brick two storey domestic type building. All buildings on the site are in very poor condition, openings are closed up with roller shutters or wire grills, in some cases windows are blocked up. Terraced houses along Tyrrell Place are currently undergoing

renovation. There is also an electrical generator and a security camera array in the front forecourt of the site.

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. 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 Z1. 'To protect, provide and improve residential amenities'.

4.1.2. 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.

4.1.3. 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

- 4.1.4. 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.
- 4.1.5. 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.
- 4.1.6. 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.

4.2. **Planning History**

4.2.1. Subject site.

PA reference number 4104/10. Permission refused for the demolition of buildings and new boundary treatment.

4.2.2. VSL History

ABP-301810-18 - Vacant Site Levy - Appeal S.9. Notice confirmed 03/09/2018.

5.0 **Planning Authority Decision**

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

5.1.1. Register of Vacant Sites Report is not on file. Information is provided in the previous section 9 appeal, ABP-301810-18 refers.

5.2. **Planning Authority Notices:**

5.2.1. A Notice of Proposed Entry on the Vacant Sites Register was issued to St Michael's House Properties 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 St Michael's House Properties, an appeal was made to the Board in relation to this notice and it was confirmed.

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 €2,700,000.

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 St Michael's House Properties on the 26 February 2020 for the value of €189,000.

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 appellant is a charity engaged in the provision of services to people with disabilities. The appellant is in the process of exchanging a draft contract to

sell lands to Cluid Housing Associated (a not-for-profit housing association). This will result in change of ownership on or before 31 December 2020. The quantum of levy for 2019 and 2020 will be zero. The planning authority have been notified and stated that when confirmed the levy will be zero for 2019 and 2020.

- Even if an alternate new owner is found, the appellant will rely on section 17(1) of the 2015 Act.
- The value of €2,700,000 placed on the lands is in excess of the market value.

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 1 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. Subsequently a Section 9 appeal was made to the Board under appeal reference ABP-301810-18. An assessment as to whether the site constituted a vacant site was carried out by the Reporting Inspector. It was 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 residential land use zoning for the area, the site could be placed on the register, these matters have not changed and are not challenged by the appellant.
- 7.4.2. The Board confirmed the entry on the vacant Sites Register on the 3 September 2018. 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. The condition and use of the site remains as it was when first placed on the register, it was and continues to be vacant or idle, section 5(1)(a)(iii)(I) is met. The remaining criteria with regard to section 6(4) of the 2015 Act that relates to housing need remains the same as before and unchallenged by the appellant, section 5(1)(a)(i) is met. I am satisfied that the site was and remains a vacant site up to the date the relevant period concerning this current appeal.

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

- 7.4.3. The appellant has not stated a use for the site during 2019, but rather presents the case that the site is in the process of being transferred to Cluid Housing Association, a not-for-profit housing association and contracts will complete before 31 December 2020. The case is further made that when there is a change in ownership, the amount of levy charged should be zero and the planning authority have agreed to this, section 17 of the 2015 Act refers:

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.

- 7.4.4. I have no information before me to show that the lands have been sold and thus ownership has not changed. There is no email or other correspondence from the planning authority to show an agreement in principle to apply a zero charge for the year and preceding year concerned. I am mindful that the site owner is a charitable

organisation that provides services for people with intellectual disabilities and that the prospective purchaser is a not-for-profit charity providing homes to people in housing need. It appears to me that the power to charge the levy as calculated or at zero lies with the planning authority under section 17 of the 2015 Act, if a sale takes place. But unfortunately for the Board, the constraints of a section 18 appeal against a demand for payment of levy are clear, either the site is no longer vacant, or the levy calculation is incorrect. In this instance, I find that the site was and is a vacant site for the purposes of section 5(1)(a) and section 18 of the 2018 Act (as amended) and so the levy can be charged by the planning authority.

7.5. Levy Calculation

- 7.5.1. A Notice of Determination of Market Value was issued to St Michael's House Properties on the 21 January 2019 stating that the valuation placed on the site is €2,700,000. The appellant states that the value of the site at €2,700,000 is in excess of the market value of the lands. No evidence from the appellant has been submitted to show that this valuation was appealed to the Valuation Tribunal. Though the appellant makes a case 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 St Michael's House Properties on the 26 February 2020 for the value of €189,000.
- 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 confirm that the site was a vacant site as of the 1 of January 2019 and was a vacant site on 24 of 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 24 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.

Stephen Rhys Thomas
Senior Planning Inspector

31 March 2021