



An  
Bord  
Pleanála

## Inspector's Report ABP-307448-20

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<b>Type of Appeal</b>	Appeal against a Section 18 Demand for Payment.
<b>Location</b>	Clonard Lodge, Sandyford Road, Dublin 18.
<b>Planning Authority</b>	Dun Laoghaire Rathdown County Council.
<b>Planning Authority VSL Reg. Ref.</b>	VS/0049.
<b>Site Owner</b>	Stargem Properties Limited.
<b>Date of Site Visit</b>	16 April 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 Dun Laoghaire Rathdown County Council, stating their demand for a vacant site levy for the year 2019 amounting to €49,000 for a vacant site at Clonard Lodge, Sandyford Road, Dublin 18 and identified as VS0049.
- 1.2. The appeal site has one stated registered owner Stargem Properties Limited.
- 1.3. A Notice of Proposed Entry on the Vacant Sites Register was issued to Stargem Properties Limited on the 7 February 2018. On the 27 June 2018, the Notice of Entry on the Vacant Sites Register was issued to Stargem Properties Limited. This section 7(3) notice was not appealed to the Board.
- 1.4. A valuation pertaining to the site was issued to Stargem Properties Limited by Dun Laoghaire Rathdown County Council on the 23 September 2019. The value of the subject site is stated to be €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 Stargem Properties Limited on the 2 June 2020 for the value of €49,000. The appellant (Stargem Properties Limited) 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 the junction of Clonard Road with Sandyford Road in a suburban area of Dublin 18. The site comprises a corner plot with a large two storey cottage style building with associated parking area and rear garden. The building is in a fairly poor condition and the car parking area and garden is overgrown and uncared for. The entrance to the site is blocked off to vehicular traffic by large concrete bollards. The site interior can be easily accessed on foot. Though having the appearance of a dwelling house, the building has been in long term use as a medical surgery in the past.

## 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 27 June 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 site is zoned objective A 'To protect and/or improve residential amenity' in the Dun Laoghaire Rathdown County Development Plan 2016-2022.

## 5.0 Planning History

5.1. Planning history on the site.

PA reference D20A/0291 and An Bord Pleanála reference PL06D.**307881** – Demolition of existing buildings on site and construction of a Build to Rent apartment development comprising of 3 no. blocks consisting of 42 no. residential units. No decision.

PA reference D09A/0206 and An Bord Pleanála reference PL06D.**233960** – 15 residential units, a medical centre and crèche.

PA reference D07A/0670 and An Bord Pleanála reference PL06D.**224777** – Permission refused for 34 residential units, retail units, a medical centre and crèche.

## 6.0 Planning Authority Decision

6.1. Register of Vacant Sites Report:

- A Vacant Sites report outlining the date of the visits to the site (9 August 2016 and 20 September 2017), the site area, zoning and the type of site for the purposes of the Act which in this case is Residential. The planning history is outlined and it is noted that there is no extant permission for development on the site other than the retention of a Doctors Surgery (D11A/0306).

It is stated that the subject site is not in residential use and is not being used for the purpose for which it was zoned.

- In terms of need for housing (tests outlined in Section 6(4)) it is stated that in terms of (a) any site zoned for residential development implies that there is a need for housing in accordance with Section 5(1)(a)(i); (b) for 3-bed house average monthly rent is €2,687 (Sept 2017) and average purchase price is approx. €492,217 (2017); (c) approx. 4,927 households qualified for social housing support (October 2017); (d) 422 properties for sale (295) or rent (127) (Sept. 2016) which is 0.5% of the 88,500 housing stock with the assessment noting that having regard to the criteria that it is considered there is a need for housing in accordance with Section 6(4) of the Act.

- In terms of suitability for housing (tests outlined in Section 6(5)) in terms of (a) as site is zoned for housing it is considered suitable for housing; (b) site is served by public infrastructure and facilities; and (c) there does not appear to be any physical condition or constraint impacting the site which might affect the provision of housing and in conclusion it is stated that the site appears suitable for the provision of housing.

- In relation to the majority of the site being vacant or idle for the last 12 months, it is stated that the site was vacant on the date of two site inspections August 2016 and September 2017 and was considered to be in the same condition for the preceding time period. It is considered that the site is vacant and has been vacant for a period beyond twelve months.

- Site does not have an active use. Reference is made to the Circular (PL07/2016) which references temporary uses and development appropriate to the zoning and concludes that the site is a vacant site as it is situated in an area where there is a need for housing, the site is suitable for the provision of housing and the site or the majority of the site is vacant or idle.

- The planning authority's submission is accompanied by a reply to the submission made by the owner, the initial submission from Stargem Properties Limited in relation of the intention to place the site on the register and photographs of the site.

## **6.2. Planning Authority Notices:**

- 6.2.1. Dun Laoghaire Rathdown County Council advised the site owner that the subject site (Planning Authority site ref. VS0049) is now liable for a payment of 7% of its valuation and hence the levy for 2019 is €49,000, dated 2 June 2020. Payment terms and methods are outlined.
- 6.2.2. A Notice of Determination of Market Value was issued to Stargem Properties Limited on the 23 September 2019 stating that the valuation placed on the site is €700,000 and instructions to make an appeal to the Valuations Tribunal, accompanied by a map with the site outlined.
- 6.2.3. A section 7(3) Notice issued on the 27 June 2018, advising the owner that their site had been placed on the register.
- 6.2.4. A section 7(1) Notice issued on the 7 February 2018, 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 Dun Laoghaire County Council to retain the subject site on the Register and charge the levy. The grounds of the appeal can be summarised as follows:
  - The owner still awaits the details of the Market Value, indicated by the Notice of Determination of Market Value, an appeal regarding the market value is not yet underway. In addition, the section 7(3) Notice did not include the detailed assessment that resulted in the placement of the site on the register, that Notice is therefore flawed.

- There are certain legal matters that need to be resolved and this effects the unencumbered fee simple value of the site. The air rights associated with the site, physically affect the provision of housing on the site and consequently the value of the site too.
- The legal complications of the subject site and next door site are illustrated by the difficulties in selling both properties. The open market value is therefore – unsaleable.
- The valuation of the site was not conducted in accordance with section 12 of the 2015 Act, a full site inspection did not take place.
- Stargem Properties Limited are still paying commercial rates for the site, since the site was vacated in 2018 by Clonard Medical.

The appellant has attached a number of appendices that include; the determination of site value and the section 15 notice.

## 7.2. Planning Authority Response

The planning authority have provided a response to the appellant’s grounds of appeal that include:

- The background details in relation to the Vacant Site Levy process. The detail of the site’s planning history is outlined and updated, current application refused by the planning authority, D20A/0291 refers.
- Details regarding the service of the Notification of Market Value are described and the planning authority note that no appeal to the Valuation Tribunal was pursued by the owner.
- The site has been vacant since at least August 2016, when it was first visited and photographed.
- The matter of removal from the commercial rates register is not relevant to the appeal.

### 7.3. **Further Response**

The owner has responded as follows:

The Section 12 Notice of Determination of Market Value is invalid and misleading as the details of how the market value was arrived at were not forwarded. The Notice was incorrectly drafted, it is flawed and hampered any attempt at an appeal regarding the valuation.

Unencumbered title – this is connected with the above notice and hence any attempt to put forward the case that the site does not have an unencumbered title could not be shown by the owner.

The owner does not dispute that the site is vacant.

## 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 27 June 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 and the buildings were in poor condition and lands untended. The site has the appearance of being vacant or idle. The appellant makes the point that the site was incorrectly valued because of legal issues that were not taken into account. These legal issues have hampered development of the site. The site did have the benefit of a planning permission, and a current application is currently on appeal, ABP-307881-20 refers. The appellant makes the point that the section 7(3) Notice was flawed because it failed to detail the methodology the planning authority utilised to place the site on the register. I find that the correct procedures were followed by the planning authority during the process of issuing each notice. I am satisfied that the site has been correctly entered on to the register and I see no flaws in the notices served. This seems clear to me when the appellant states, by correspondence to the Board dated 27 August 2020, that they do not dispute and have never disputed that the site is a vacant site.

8.4.2. Given the context of the grounds of appeal, I am satisfied that the appellant's main contention is not that the site was incorrectly placed on the register but that the value of the site was incorrectly calculated. I deal with this aspect of the appeal in the following sections. 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. Though the site has the appearance of a domestic dwelling house, it has, in the past, been used as a medical surgery. However, that medical use has been relocated and the site has remained vacant. I do not consider this site to represent a 'home' for the purposes of the 2015 Act, as it is clear that persons have not occupied the building as a residence for quite some time. 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

8.4.3. The appellant admits that the site has been vacant for some time, including the period of the levy charge, 2019. The planning authority underline this fact. My own observations of the site would concur that the site has been vacant for some time, the building is shoddy in appearance and the gardens are overgrown. I am satisfied



that given the assertion by the owner and the evidence of the planning authority the site remained vacant for the period concerned, 2019 and the appropriate charge should be levied.

## 8.5. Levy Calculation

- 8.5.1. A Notice of Determination of Market Value was issued to Stargem Properties Limited on the 23 September 2018 stating that the valuation placed on the site is €700,000. No evidence from the appellant has been submitted to show that this valuation was appealed to the Valuation Tribunal. However, the main grounds of the current appeal revolve around the service of the section 12 Notice and the possible flaws contained therein. The appellant makes the point that the section 12 Notice of the 23 September 2018 states that the details of the market value estimated for the site will follow under a separate cover. The appellant states that they received no further information and were thus unable to make an appeal to the Valuations Tribunal setting out the unencumbered title complications that could make an impact on market value. The appellant maintains that the incorrect drafting of the Notice of Determination of Market Value is therefore flawed and cannot stand. They also question the methodology of calculating value without any official of the Council entering into the building as no advances to do so were made by the planning authority. In this regard I note section 12(2) and (3) of the 2015 Act that states:

*(2) The market value of the vacant site shall be estimated by the planning authority and it shall authorise a person it considers suitably qualified for that purpose to inspect the site and report to it the value thereof and the person having possession or custody of the site shall permit the person so authorised to inspect at such reasonable times as the planning authority considers necessary.*

*(3) Where a person authorised under subsection (2) is not permitted to inspect a property for the purposes of providing an estimate, he or she shall make an estimate of the market value of the site based on his or her knowledge of the site and property and the prevailing local market conditions.*

- 8.5.2. It is possible that the procedures employed by the planning authority to value the site, could have formed the basis for an appeal to the Valuation Tribunal. The text contained in the notice, the methodology employed to value the site and the market

value price assigned to the site are all matters that could have been reasonably assembled in an appeal to the Valuation Tribunal, with or without further correspondence from the planning authority after the section 12 notice was issued.

- 8.5.3. Though the appellant may feel they 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 (23 September 2019), the appellant should have appealed directly to the Valuation Tribunal within 28 days. This has not happened and the owner did not make appeal to the Tribunal against a determination made by a planning authority. The scope of an appeal to the Valuation Tribunal is set out in detail at section 13 of the 2015 Act and this section of the Act was highlighted to the owner in the text of the section 12 Notice. 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.
- 8.5.4. A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to Stargem Properties Limited on the 2 June 2020 for the value of €49,000. 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.
- 8.5.5. 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 confirm that the site was a vacant site as of the 1 of January 2019 and was a vacant site on 26 June 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.

## 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 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 26 June 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

28 April 2021