



An
Bord
Pleanála

Inspector's Report ABP-307449-20

Type of Appeal	Appeal against a Section 18 Demand for Payment.
Location	The Glen, Golf Lane, Glenamuck Road, Carrickmines, Dublin 18.
Planning Authority	Dun Laoghaire Rathdown County Council.
Planning Authority VSL Reg. Ref.	VS-0059
Site Owner	Torca Developments Ltd.
Planning Authority Decision	Demand Levy.
Date of Site Visit	2 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 Dun Laoghaire Rathdown County Council, stating their demand for a vacant site levy for the year 2019 amounting to €157,500 for vacant site lands at The Glen, Golf Lane, Glenamuck Road, Carrickmines, Dublin 18 and identified as VS0059.
- 1.2. The appeal site has one stated registered owner Torca Developments Ltd.
- 1.3. A Notice of Proposed Entry on the Vacant Sites Register was issued to Torca Developments Ltd on the 24 October 2018. On the 12 December 2018, the Notice of Entry on the Vacant Sites Register was issued to Torca Developments Ltd. This section 7(3) notice was not appealed to the Board. A section 11(1) Notice to Owner of Site Entered on Vacant Sites Register and Levy to be Charged was issued to Cornel Living Limited on the 29 April 2019.
- 1.4. A valuation pertaining to the site was issued to Torca Developments Ltd by Dun Laoghaire Rathdown County Council on the 23 September 2019. The value of the subject site is stated to be €2,250,000. A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to Torca Developments Ltd on the 2 June 2020 for the value of €157,500. The appellant (Torca Developments Ltd) 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

The site is located off the Glenamuck Road, along Golf Road immediately to the south of the M50 in Carrickmines, County Dublin. The site is accessed from Golf Road which is a cul de sac that links Glenamuck Road to the Carrickmines golf club. Golf Road is proposed for upgrading under the Cherrywood SDZ, but this has not happened to date. A new housing development called Blackberry Hill (about 62 houses) is also accessed from Golf Road.

The application site is irregularly shaped and currently undergoing significant construction works. The basement and first floors associated with a permitted apartment development are already constructed. The eastern boundary adjoins the

development in Blackberry Hill and a two-meter boundary wall with piers defines this boundary.

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 14 February 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.

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 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. Subject site VSL History

None.

5.2. Planning history on the site.

An Bord Pleanála reference **ABP-304641-19** – Permission for 1 apartment block with 48 units. New vehicular access and all associated site works. Permitted October 2019, currently under construction.

6.0 Planning Authority Decision

6.1. Register of Vacant Sites Report:

- A Vacant Sites report outlining the date of the visit to the site (29 August 2018), the site area, zoning and the type of site for the purposes of the Act which in this case is Residential. No current permission for development on the site. 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 €2,612 (Oct 2018) and average purchase price is approx. €567,110 (Oct 2018); (c) approx. 4,484 households qualified for social housing support (Sept 2018); (d) 1,608 properties for sale (1,225) or rent (383) (Oct 2018) which is 1.85% of the 86,962 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 site inspection August 2018 and was considered to be in the same condition for the preceding time periods

(aerial photography) June 2018/May 2017/June 216 /December 2013. 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 no development taking place 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 Report on the Submissions received in relation to the establishment of the register, a record of the chief executive's order, the initial submission from Torca Developments Ltd in relation of the intention to place the site on the register.

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. VS0059) is now liable for a payment of 7% of its valuation and hence the levy for 2019 is €157,500, dated 2 June 2020. Payment terms and methods are outlined.
- 6.2.2. A Notice of Determination of Market Value was issued to Torca Developments Limited on the 23 September 2019 stating that the valuation placed on the site is €2,250,000 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 Torca Developments Limited on the 29 April 2019.
- 6.2.4. A section 7(3) Notice issued on the 12 December 2018, advising the owner that their site had been placed on the register.
- 6.2.5. A section 7(1) Notice issued on the 24 October 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 appellant states that the planning authority provided no evidence to show that the site was vacant for the twelve months prior to 12 December 2018, the date the site was placed on the register. The appellant states that the site in question was in use for equine grazing. As such the entry of the site onto the register should not have happened in the first place, the site should be removed from the VSR.

7.2. **Planning Authority Response**

The planning authority have provided a detailed response to the appellant's grounds of appeal, a summary includes:

A reminder to the Board that the current appeal is not to do with whether the site was originally corrected placed on the register but whether it continues to be a vacant site. The current appeal makes no attempt to address the matters under consideration of a section 18 appeal, that the site is no longer a vacant site.

With reference to the use of the site for equine purposes, it is noted that the site changed ownership after the land was zoned residential. This is relevant with regard to the amendments of 2018 to the Urban Regeneration and Housing Act 2015, in this context it is noted that previously a Mr James Rossiter (with legal interest in the site) secured a permission for residential development in 2008. The owners are now Torca Developments Limited and equine use or not, this use cannot be considered because it was for a purpose that does not consist solely or primarily of the provision of housing.

7.3. **Further Response**

The appellant reiterates their grounds of appeal that relate to their belief that the planning authority did not adequately demonstrate that the required period of twelve months had elapsed during their assessment of whether the site was vacant for that period in the first instance.

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. I note the points made by the planning authority that the Board have no role in assessing whether the site was a vacant site for the purposes of the Act, in the first instance. A Section 7(3) Notice of Entry on the Vacant Sites Register was issued on the 12 December 2018. It was determined by the planning authority 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, the site could be placed on the register. The planning authority note that the owner has put forward a rationale why the site should not have been entered on the register in the current appeal, but the time has passed for such an appeal to be effective. If there was a relevant reason why the site should not have been entered onto to the register back in 2018, then the owner could have appealed after their submission on the section 7(1) notice failed. There is no dispute between planning authority and owner about the suitability of the site for housing or the need for housing in the area.

8.4.2. The appellant challenges and disputes the previous decision of the planning authority in relation to the use of the site for equine purposes 12 months prior to December 2018, but in my mind, this is not particularly relevant to this section 18 appeal. Even if the equine use prior to placement on the register could be considered, I am certain it would fail to lift the site from the register because the 2015 Act was amended in July 2018 to take account of beneficial use, zoning and ownership, section 5(1)(a)(iii) as follows:

the site, or the majority of the site is —

(I) vacant or idle, or

(II) being used for a purpose that does not consist solely or primarily of the provision of housing or the development of the site for the purpose of such provision, provided that the most recent purchase of the site occurred —

(A) after it became residential land, and

(B) before, on or after the commencement of section 63 of the Planning and Development (Amendment) Act 2018.

8.4.3. The only information I have before me regarding ownership is stated by the planning authority, that the site was in possession of a Mr Rossiter when a planning application was lodged in 2007. The land at that time was already zoned residential and continues to be zoned residential today. Therefore, a change of ownership has occurred since the land became zoned for residential purposes and so the use for equine purposes can no longer defend the site from placement on the register because during 2018 the zoned land was not being used for the delivery of housing. Matters have now changed; the site is under active construction and I examine this fact later. The planning authority followed the correct procedures, up to a point, to place the site on the register, the site was visited, and assessments made, the process of issuing notices was followed, regard was had to the owner's submission, (a section 9 appeal was not made), consequently the site was placed on the register.

8.4.4. The owner has not raised any grounds of appeal that relate to the use of the site during 2019, after the site was placed on the register. They instead confine their efforts to disputing the placement of the site on the register in the first place and cite previous vacant site levy appeals where the 12 month period of vacancy was

examined in detail. The cases mentioned by the owner relate to clear cut deficiencies in the assessment methodology and it could not be determined with certainty that the 12 month period had elapsed prior to placement of the site on the register. The Board are aware of VX10.303754 and VX10.303775, both in Kilkenny. In the subject appeal I can see that a site visit was made on the 29 August 2018 and that aerial photography from third party suppliers was relied on to fill in the gaps before August 2018. This is a flaw, both in terms of true site visits and reliance on aerial photography, in this regard I refer the Board to a much more relevant case, VV06D.303388 refers. In that case the use of third party photographic evidence to support the theory that the site was vacant for the relevant time period was not supported by the inspector or the Board.

- 8.4.5. Back to the fundamentals of the 2015 Act (as amended) that requires the Board on appeal to look at the past condition of the site and determine if the site was vacant or idle. Section 9 states:

(2) On an appeal under this section the burden of showing that the site was not a vacant site for the duration of the 12 months concerned is on the owner of the site.

(3) Where the Board determines that a site was not a vacant site for the duration of the 12 months concerned or was no longer a vacant site on the date.

The relevant time period for this appeal extends 12 months back from the date on which the site was entered on the register, in this instance the 12 December 2018. I note that the Planning Authority have stated that the site has been vacant for the duration of 12 months and I also note a site inspection date of the 29 August 2018. The relevant time period is a very important factor and one upon which the 2015 Act is quite plain in its interpretation, section 6(2) states as follows:

“A Planning Authority shall enter on the register a description, including a map, of any site in its functional area which was, in the opinion of the Planning Authority, a vacant site for the duration of the 12 months preceding the date of entry.”

- 8.4.6. The planning authority have relied on Google Earth satellite imagery over various time periods, including the relevant 12 month period to illustrate the condition and

status of the site. In the case of VV06D.303388 I found this to be unsound and so did the Board and that section 9 appeal was successful in removal of the site from the register. In terms of the Kilkenny cases, both of those appeals were made under section 18 where the 12 month period was in question and they were also successful in removal from the register. I note the submission made by the planning authority that the Board should only consider factors that relate to vacancy of the site in the year concerned (2019) or when the appeal was made (June 2020). However, it has been demonstrated by previous section 18 appeals that the Board do take into account factors that led to the site being placed on the register in the first place. The circumstances are the same in this instance and I find that the 12 month time period before placement on the register has not been adequately accounted for.

8.4.7. The Planning Authority should provide a clear chronology to confirm site visits and provide a definitive assessment of the duration of twelve months. In this instance, the Planning Authority have not adequately accounted for the duration of the twelve month period. Notwithstanding the possibility of equine use, it is likely at the time the site visit was undertaken by the PA the site had been inactive or idle for the relevant time period, but it is not clear from information presented by the Planning Authority that the relevant time period had elapsed and the condition of the site cannot be fully understood without doubt.

8.4.8. Bearing in mind that the equine use can be disregarded because of section 5(1)(a)(iii)(II)(A)(B) of the 2015 Act, it is likely and probable that the lands had been vacant or idle for the relevant time period, I cannot be certain. For this reason alone the site should be removed from the register. This does not preclude the Planning Authority from recommencing the process and implementing the 2015 Act in terms of allowing the relevant 12 month time period to elapse. I am not satisfied that the placement of the site on the register was carried out correctly and in accordance with law and I recommend its removal from the vacant site register.

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

8.4.9. The appellant has not submitted any use for the site for the period of 2019, the period for which a levy payment has been demanded. On the date of my site visit, June 2021, I observed that a great amount of construction work had already occurred, and construction works are ongoing. These works are on foot of a

permission granted October 2019, after appeal, reference number ABP-304641-19 refers. The appellant does not state when these works began, and the planning authority do not either. However, it is likely that given the date (July 2020) of the most recent correspondence from the planning authority on file that construction had not yet commenced. From that I conclude that no beneficial use or construction activity had taken place during 2019 and the levy could be charged.

8.5. Levy Calculation

- 8.5.1. A Notice of Determination of Market Value was issued to Torca Developments Limited on the 23 September 2019 stating that the valuation placed on the site is €2,250,000. 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 Torca Developments Limited on the 2 June 2020 for the value of €157,500.
- 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 1 January 2019 and was not a vacant site on the 29 June 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 recorded date of the site inspection, (29.08.18) provided by the Planning Authority in its submitted documentation and the absence of sufficient evidence to support the contention of the Planning Authority that the site was vacant and idle for the period of 12 months preceding the date of placing the site on the register,

the Board is not satisfied that the site was a vacant site on the 1 of January 2019 and was a vacant site on 29 June 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

11 August 2020