



An
Bord
Pleanála

Inspector's Report ABP-308658-20

Type of Appeal	Appeal against a Section 18 Demand for Payment (SD/VS248)
Location	Site at Junction of Main Street & Boherboy, Saggart, Co. Dublin.
Planning Authority	South Dublin County Council
Planning Authority VSL Reg. Ref.	SD/VS248
Site Owner	Maxol Limited.
Planning Authority Decision	Charge Levy
Date of Site Visit	15 September 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 South Dublin County Council, stating their demand for a vacant site levy for the year 2020 amounting to €98,000 for a vacant site at the Junction of Main Street & Boherboy, Saggart, Co. Dublin and identified as SD/VS248. The Notices are addressed to Maxol Limited and Thomas McMullan.
- 1.2. A Notice of Proposed Entry on the Vacant Sites Register was issued to Thomas McMullan on the 31 October 2018. On the 18 December 2018, the Notice of Entry on the Vacant Sites Register was issued to Thomas McMullan. This section 7(3) notice was appealed to the Board on the 22 January 2019. On the 9 August 2019, the Board confirmed the notice and determined that the site is a vacant site within the meaning of the Act.
- 1.3. A valuation pertaining to the site was issued by South Dublin County Council on the 16 October 2019. The value of the subject site is stated to be €1,400,000. A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to Maxol Limited and Thomas McMullan on the 20 October 2020 for the value of €98,000. The appellant (Maxol Limited and Thomas McMullan) 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 lands comprise a regular and square shaped slightly sloping site that adjoins Main Street to the north, Boherboy Road to the west, an area of open space to the east and an area of open space, a linear strip of perpendicular parking and Páirc Mhuire, a residential area to the south.
- 2.2. The site accommodates a two-storey structure which was part of a former public house which addresses Main Street. The site is fenced with steel wire mesh replete with an attractive and well-maintained plastic sheet hoarding to the west and northern boundary. The public realm adjacent to the site is attractive with a small square next to the site along Main Street. The former public house on the site is boarded up but its public face is attractively decorated to resemble an occupied

building and is well maintained. The rear of the former public house building is less well maintained and is patched up with a variety of materials and uniformly painted with no signs of graffiti. The site interior is in grass that appears to be routinely cut and there are no signs of litter on the site or in the area. I would also note that 'for sale' signs were on the site on the day of my visit.

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 planning authority 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 18 December 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.

3.2. Development Plan - South Dublin County Development Plan 2016-2022

3.2.1. The site is zoned VC in the County Development Plan the objective of which is to protect, improve and provide for future development of Village Centres.

3.2.2. With respect to the vacant site register, the South Dublin County Council Development Plan 2016-2022 was varied (Variation 1 & 2) on 21st May 2018 with Chapter 11 varied to include Section 11.1.2 which provides that lands zoned Objective REGEN (regeneration), TC (town centre), DC (District Centre), VC (village

centre) and LC (local centre) are included for the purposes of Regeneration as defined in the 2015 Act.

4.0 Planning History

4.1. VSL history:

Ref: **ABP-303500-19** - Appeal against Entry on the Vacant Site Register. Notice Confirmed.

4.2. Site history:

Ref. **SD18A/0202 (ABP-303270-18)** – Permission granted for a mixed use development of 29 residential units, office unit (100 sq.m) and 2 retail units (87 sq.m & 154 sq.m). A first party appeal against a financial contribution was made with condition removed.

Ref. **SD16A/0008 (ABP-PL06S.246386)** – permission refused on appeal for demolition of 2-storey public house and redevelopment to include two-storey detached building with retail and petrol filling station.

Ref. **SD06A/0636 (ABP-PL06S.223166)** – permission granted for demolition of existing garage and extension to Saggart Arms and construction of a mixed-use residential, office, retail and restaurant development. Permission extended until November 2017.

5.0 Planning Authority Decision

5.1. Planning Authority Reports

- 5.1.1. A PA report, entitled Register of Vacant Sites Planning Report and which is dated 17th December 2018 refers to inspection dates of 6 September 2016 and 30 October 2018. It outlines the site details, location, planning history, zoning and ownership and the responses to the Section 7(1) Notice received are summarised. It comments that the site is a prominent site in the centre of the village with part of a disused public house on the site facing onto Main Street with the site surrounded by fencing and no evidence of recent activity on site. It states that the submission received has been considered by the PA with any proposals to progress development welcomed but

that proposals alone are insufficient to determine that a site is no longer vacant or idle which the site has been for a number of years. It states that it has not been demonstrated to the satisfaction of the PA that the site or majority of the site has not been vacant or idle for the preceding 12 months.

- 5.1.2. In relation to adverse effects it states that the site is a large and prominent site in the centre of Saggart well served by existing infrastructure and facilities. Given the lack of any productive uses on site, considered that the site being idle does not provide for an efficient use of the available public services and facilities which serve the subject site and considered that the vacant and idle nature of this urban site set within a built up area with surrounding active uses has adverse effects on existing amenities and on the character of the area. It is stated that the site appears to be neglected by virtue of the absence of any recent activity on site and the presence of a boarded up building on site. It notes that the submission notes that works were carried out by the previous owners at the direction of the Derelict Sites Section of SDCC including the erection of fencing and works to secure the existing building. While these works may have overcome the derelict or ruinous condition of the site and it is not considered that they address the neglected condition of the site. No evidence of anti-social behaviour having taken place on site at time of site inspection and there has not been a reduction in the number of habitable homes or people living in the area due to the site being vacant or idle.
- 5.1.3. Considered that subject site being vacant or idle has adverse effects on existing amenities, reduces the amenity provided by existing public infrastructure and facilities in the area in which the site is situated and has adverse effects on the character of the area and furthermore considered that the above matters arise as a result of the existence of the site as vacant or idle land. The recommendation outlines that the site is zoned VC in the Plan, has been idle for a number of years and in accordance with Section 5(1)(b) is a vacant site which is suitable for regeneration and should be entered on the Register.

5.2. **Planning Authority Notices:**

- 5.2.1. South Dublin County Council advised the site owner that the subject site (Planning Authority site ref. SD/VS248), stands on the VSR and is now liable for a payment of

the levy for 2020 of €98,000 (Demand Notice). Payment terms and methods are outlined.

- 5.2.2. A Notice of Determination of Market Value was issued to Maxol Limited and Thomas McMullan on the 16 October 2019 stating that the valuation placed on the site is €1,400,000 and instructions to make an appeal to the Valuations Tribunal.
- 5.2.3. A section 7(3) Notice issued on the 18 December 2018, advising the owner that their site had been placed on the register.
- 5.2.4. A section 7(1) Notice issued on the 31 October 2018, advising the owner that their site had been identified as a vacant site and invited submissions, accompanied by a site map.

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 South Dublin 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 demand for payment is contrary to the purpose of the 2015 Act, the levy charge is unreasonable and inappropriate. The lands are zoned Village Centre and permission has been secured for a mixed used development, however:

- The planning authority are reluctant to provide public access to the site. As part of the mixed use permission, the planning authority issued a letter of consent to include a strip of land in order to allow a coherent and safe development of the entire lands. Thus, the vehicular entrance to the site was taken from the southern site boundary (Páirc Mhuire) across Council land. Despite numerous approaches to the local authority, meetings declined, no resolution has been reached, and rights of way not agreed to date. The owner considers it unreasonable, punitive, and inconsistent that the local authority should seek a levy and also prevent the development of the site.
- The planning authority have failed to act on a National Planning Objective to develop land in public ownership for housing. NPO 66 seeks to prioritise the

development of state-owned land to realise the development potential of such land. By failing to proactively engage with the owner to develop the subject lands, the local authority is acting against NPO 66 and not meeting a local housing need. The owner has obtained a planning permission to develop the site for housing, removed a busy petrol station and its busy traffic movements, but has been frustrated by the Council in implementing this permission.

- The owner is in the process of selling the lands but is hindered by title issues that requires cooperation from the local authority. Maxol Limited is a not property developer and intends the sale of the site, but such a sale is difficult because of the lack of a right of way agreement across Council owned land and now the burden of a VSR levy. The demand for a levy payment is irrational as it makes the site even more unattractive for sale. The effect of the levy charge works against the intention of the 2015 Act that seeks to secure housing where required and in areas which are in need of renewal to prevent such sites lying idle or remaining vacant.
- The site is no longer a vacant site because development is imminent but held up by a lack of cooperation from the local authority in terms of securing rights of way.

The appeal is accompanied by a list of the contacts made with the local authority, the demand notice, location map and invoice.

6.2. Planning Authority Response

The planning authority have provided a response to the appellant's grounds of appeal that include an assertion that there is a housing need in the area and all necessary information has been passed on to the Board.

The planning authority's correspondence of 11 December 2020, refers to an email (dated 9 December 2020) that includes all the reasoning for the inclusion of the site on the register. This email does not appear on the file, but the documentation provided by the planning authority allows a full assessment of the case on hand..

7.0 Assessment

7.1. Introduction

7.2. The appeal on hand 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.

7.3. **The site is no longer vacant**

7.3.1. 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)(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 2020.

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 18 December 2018. Subsequently a Section 9 appeal was made to the Board under appeal reference ABP-303500-19. A detailed assessment as to whether the site constituted a vacant site was carried out by the Reporting Inspector. It was determined by the Board that given the neglected condition of the site and the neglected condition of the structure thereon, which it is considered has adverse effects on existing amenities and on the character of the area, the site could be placed on the register, these matters have changed to some extent, but are not directly addressed by the appellant.

7.4.2. The owner acknowledges that the site was placed on the register, in their mind it is events rather than the actual site that have changed since then. In particular, the owner criticises the inaction of the Council to engage with them to implement a planning permission or even sell the site, the planning permission would deliver housing and change the status of the site from idleness to usefulness. I address these contentions in the next section of my report. I am satisfied that no new

information has come to the fore since the Section 7(3) Notice was issued and that the matter of vacancy has already been adjudicated on and should not be re-examined. I do not intend to revisit the decision to place the site on the register, there is no strong opposition to the reasoning for the placement of the site on the register in the first place.

No longer a vacant site as of the 1st of January 2020

- 7.4.3. The owner has not advanced any actual use for the site for the year concerned 2020. The substantial matters that arise from the appeal grounds refer to the owner's frustration at the Council's inaction to provide rights of way that would either pave the way for development to proceed or for the uncomplicated sale of the site. In this context, I note that permission for a mixed-use residential scheme was granted for the appeal site in 2019. From inspection of the documentation held online by SDCC for that permission, I can see that compliance correspondence has been submitted and acknowledged by the planning authority as recently as April 2021. I also note correspondence held on the planning permission file that relates to consent given by the local authority to include Council lands in order to allow a planning application to be made. Finally, I note that the lands in the ownership of the Council would allow the permitted vehicular entrance to the site and any logical development of the lands requires more from the Council in terms of rights of way or sale of the land in question.
- 7.4.4. This set of circumstances must be very frustrating for the owner and this is illustrated by the long list of correspondence that has been engaged upon between October 2019 and May 2020, purely in relation to necessary rights of way and maps. It seems to me that the Council has it within their gift to allow this site either be developed now or be sold at full value and unaffected by legal title issues that pertain to the margin of land south of the site. However, these are all administrative and legal matters, none of which can be viewed through the narrow focus of the 2015 Act as an actual use for the site. Should the owner wish to sell, I am sure that a recalculation would be made on the value of the site and perhaps this matter should have been raised by the owner in relation to the site valuation under the section 12 Notice. However, I have no information before me that indicates that an appeal to the valuation tribunal was made.

7.4.5. The owner highlights the fact that the Council is not meeting NPO 66 of the National Planning Framework, to deliver housing. Depending upon the point of view, this may be true to some extent, but it is not a factor that directly relates to the use of the site for 2020. The heart of the issue in the eyes of the owner, is that the local authority is charging a levy on the one hand and on the other are restricting the implementation of a permission that would deliver housing and rejuvenate the site. However frustrating this might all be, the thrust of the 2015 Act is to address housing supply through either construction activity or leveraging lands to new owners that are better positioned to build. I do not consider that the spirit of the 2015 Act has been wrongly applied by the planning authority insofar as the parameters of the Act have been met to place the site on the register in the first place. I cannot comment on the motivation of the local authority to deal or not deal with the landowner in terms of rights of way or other matters, these are outside the remit of this appeal.

7.4.6. In terms of the current appearance of the site, I can see that the owner has made substantial efforts to ensure that site does not have an adverse appearance on the amenities of the area. The overall site is well maintained, there are no signs of litter or graffiti and most noticeably the former public house building on site has been, cosmetically upgraded, painted and made to appear as if in use. The site has changed markedly from when it was first placed on the register. The owner does not directly address these matters in their grounds of appeal but it raises an interesting question that must be answered. The test for whether a regeneration site is a vacant site is determined as follows:

5. (1) In this Part, a site is a vacant site if—

(b) in the case of a site consisting of regeneration land—

(i) the site, or the majority of the site, is vacant or idle, and

(ii) the site being vacant or idle has adverse effects on existing amenities or reduces the amenity provided by existing public infrastructure and facilities (within the meaning of section 48 of the Act of 2000) in the area in which the site is situated or has adverse effects on the character of the area.

7.4.7. It follows that a regeneration site must be vacant and because of this vacant condition the site must also have an adverse effect on the area. The criteria for an adverse effect is defined by section 6(6) of the Act as follows:

A planning authority, or the Board on appeal, shall determine whether or not the site being vacant or idle has adverse effects on existing amenities or reduces the amenity provided by existing public infrastructure and facilities (within the meaning of section 48 of the Act of 2000) in the area in which the site is situated or has adverse effects on the character of the area for the purposes of this Part by reference to whether—

(a) land or structures in the area were, or are, in a ruinous or neglected condition,

(b) anti-social behaviour was or is taking place in the area, or

(c) there has been a reduction in the number of habitable houses, or the number of people living, in the area,

and whether or not these matters were affected by the existence of such vacant or idle land.

7.4.8. When the site was initially placed on the register, it was because it was vacant and neglected. Though the site is still vacant, it is no longer neglected, and the former public house building is arguably an attractive addition to the streetscape. In my opinion, matters have changed since the site was placed on the register and though not in actual use, the site is no longer having an adverse effect on the amenity or character of the area. Given that housing was never present on the site, and that houses are recently constructed and under construction nearby, the vacancy of the site has not reduced the number of habitable houses or population either.

7.4.9. The 2015 Act under a section 18 appeal asks whether the site was no longer a vacant site and by this I understand the Act to mean a vacant site as it was first entered. The site is still vacant, it is idle and has no use. However, the test for regeneration sites requires criteria to be met in addition to vacancy and in this case the site fails to meet any of them. The site does not impact on the amenities of the area as defined by section 48 of the Act of 2000, it does not have adverse effects on the character of the area with reference to ruinous/neglected condition, no antisocial behaviour is/was taking place and there hasn't been a reduction in housing or population in the area. The site no longer fully meets parts 5(1)(b)(i) and (ii) and so no longer constitutes a vacant site as defined by the 2015 Act.

7.4.10. I am satisfied that for the period concerned, 2020, the was no longer a vacant site for the purposes of the 2015 Act and was no longer a vacant site on the date on which the appeal was made.

7.5. Levy Calculation

7.5.1. A Notice of Determination of Market Value was issued to Maxol Limited on the 16 October 2019 stating that the valuation placed on the site is €1,400,000. 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 Maxol Limited on the 20 October 2020 for the value of €98,000.

7.5.3. 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.

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 no longer a vacant site in the year concerned (2020) and was no longer a vacant site on the 13 November 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 well maintained and good condition of the site and structures thereon, the lack of any evidence for anti-social behaviour either was or is taking place and that the number of habitable houses or population hasn't decreased in the area, during the year concerned (2020) or on the 13 November 2020, the date on which the appeal was made.

the Board is not satisfied that the site was a vacant site in the year concerned (2020) or on the 13 November 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

22 September 2021