



An
Bord
Pleanála

Inspector's Report ABP-309794-21

Type of Appeal	Appeal against a Section 18 Demand for Payment
Location	Site at the rear of 44 Parnell Road, Harold's Cross, Dublin 6.
Planning Authority	Dublin City Council South
Planning Authority VSL Reg. Ref.	VS-0748
Site Owner	Tinnelly Construction Ltd.
Date of Site Visit	8 th April 2022
Inspector	Daire McDevitt

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 2020 amounting to €42,000.00 (forty two thousand euros) for vacant site Lands at rear of 44 Parnell Road, Harold's Cross, Dublin 6 and identified as VS-0748. The appeal site has one stated registered owner Tinnelly Construction Ltd.
- 1.2.** A Notice of Proposed Entry on the Vacant Sites Register was issued to Tinnelly Construction Ltd on the 8th July 2019. On the 26th August 2019, the Notice of Entry on the Vacant Sites Register was issued to Tinnelly Construction Ltd. This 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 14th October 2019. The value of the subject site is stated to be €600, 000.00 (six hundred thousand euros). A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to Tinnelly Construction Ltd on the 26th February 2021 for the value of €42,000.00. The appellant (Tinnelly Construction 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, with a stated area of c. 0.1071 hectares, is located to the rear of No. 44 Parnell Road. This section of Parnell Road runs to the south of the Grand Canal, between Donor Avenue and Clanbrassil Street Upper.

The site is accessed via a lane running between No.s 44 and 45, opening out into an irregular shape. To the south of the site are the grounds of Our Lady's Hospice Harolds Cross. The eastern boundary of the site adjoins the Donore Avenue Scout Hall and the rear of No. 44 Parnell Road. Further east are two storey dwellings on Arbutus Avenue. A gated laneway off Arbutus Avenue provides access to the Scout Hall and the rear gardens of No.s 37-43 Parnell Road. The western boundary of the site is the rear boundary walls of No.s 45 and 46 Parnell Road.

The site was secured and has safety signage erected. Machinery associated with a construction site was observed but there was no evidence of activity on the day of my inspection.

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) and 5(2) of the Act. A section 7(3) Notice was issued 26th August 2019 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

The relevant plan is Dublin City Development Plan 2016-2022.

The site is zoned **Z1** *'to protect, provide and improve residential amenity.'*

Section 14.9 of the DCC development plan states that the VSL will apply to lands zoned **Z1**, **Z2**, **Z8**, **Z10**, **Z12** & **Z14** for the purposes of residential and **Z3**, **Z4**, **Z5**, **Z6**, and **Z7** for regeneration.

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.

5.0 Planning History

ABP 309756-21, Section 18 appeal (Demand for Payment). Invalid Fee.

PA Ref. 3974/17 (ABP 300546-18) refers to a 2018 grant for the construction of a 3-storey apartment building over single storey basement car park with 9 no. apartments consisting of 1 no. 1 bedroom duplex, 2 no. 2 bedroom duplex, 5 no. 1 bedroom and 1 no. 2 bedroom units, private terraces at ground floor level, private balconies at first and second floor level and communal roof terrace at second floor level. Basement to accommodate 9 no. car parking spaces and a refuse storage/recycling area. Bicycle parking and refuse composting area at ground level

on a site of 0.1 Ha together with all associated landscaping, site services and external works.

VS 0748. Site is on the Vacant Site Register.

6.0 Planning Authority Decision

6.1 Register of Vacant Sites Report:

6.1.1 A Report was prepared for the site outlining the date of the visits to the site, description of the area, zoning, planning history and the type of site for the purposes of the Act which in this case is Residential. The following key points are noted:

Site visits were undertaken on 22/07/16, 14/06/19, 24/01/20.

Aerial Images for 2013 and 2016 are included in the report.

The Planning Authority stated that the site was vacant for in excess of 12 months.

Following the site inspection of 24/01/20 the Planner noted that there was no construction or development taking place. It was noted that at the time (24/01/20) the site would still be considered to be majority vacant and therefore suitable to remain in the vacant sites register. Should the site become actively under construction it may be revisited at that time.

6.1.2 In terms of criteria set out in section 5(1)(a) it is detailed that:

- (i) the site is situated in an area in which there is a need for housing.
- (ii) the site is suitable for the provision of housing, and
- (iii) the site, of the majority of the site is vacant or idle.

6.2 Planning Authority Notices:

6.2.1 Dublin City Council advised the site owner (Notice dated 26th February 2021) that the subject site (Planning Authority site ref. VS-0748) is now liable for a payment of 7% of its valuation and hence the levy for 2020 is €42,000.00. Payment terms and methods are outlined.

6.2.2 A Notice of Determination of Market Value was issued to Tinnelly Construction Ltd on the 14th October 2019 stating that the valuation placed on the site is €600,000.00

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 26th August 2019, advising the owner that their site had been placed on the register.

6.2.4 A section 7(1) Notice issued on the 8th July 2019 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

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 site was inspected on a number of occasions during 2020 by DCC Vacant Sites Department along with a representative of Tinnelly Construction Ltd. During these inspections it is stated that it was clear works had begun.
- The site was closed on several occasions during 2020 and 2021 due to the Covid-19 pandemic and government restrictions.
- As the company is based in Co. Down, representatives were unable to travel and provide photographs due to restrictions.

7.2 Planning Authority Response

The planning authority have not provided a response.

8.0 Assessment

8.1 Introduction

8.1.1 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.

(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.

8.2 The site is no longer vacant

8.2.1 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 2020.

8.2.2 For the purposes of this assessment, I will consider both scenarios.

8.3 Is it a Vacant Site?

8.3.1 A Section 7(3) Notice of Entry on the Vacant Sites Register was issued on the 26th August 2019. No Section 9 appeal was made to the Board. A assessment was carried out by the Planning Authority as to whether the site constituted a vacant site. Following an assessment the site was placed on the register, these matters have not changed.

8.3.2 The appellant has stated that the works were taking place intermittently during 2020 and 2021 and as such was not vacant. And that works had to stop and close during 2020 and 2021 due to government restrictions arising from the covid 19 pandemic.

8.3.3 The owner statement that works were taking place and while not specifically stated in the grounds of appeal imply that the site was occupied for the relevant period and therefore not vacant or idle. The appeal grounds also refer to delays arising from site closures due to the Covid pandemic. Unfortunately, the 2015 Act does not make allowances for delays arising from the Covid Emergency.

8.3.4 In terms of the current appearance of the site, I notice that the site is secured and there is signage erected that one would associate with a construction site along with machinery on site. I did not observe any activity at the time of my inspection and no personnel were on site. There are limited views of the site from the adjoining public road. The planning authority have not submitted a response to the appeal and I must rely on their report which refers to a site inspection carried out on the 24th January

2020 and correspondence dated 27th January 2020 from DCC to the appellant which refers to the site remaining on the vacant sites register as no activity was observed at the site of the site inspection. The onus is on the appellant to demonstrate the site was no longer vacant for the relevant period for which the levy applies, in the case for the year 2020. Whether the site can or could have been seen from the public realm is not relevant in this instance, as no use for the site has been advanced by the owner. Whether works on site were taking place on site after the date of this appeal in 2021 is also irrelevant as the levy which is the subject of this appeal relates to the year 2020. I am satisfied that for the period concerned, 2020, the site remained a vacant site for the purposes of the 2015 Act and enables a charge to be levied.

8.4 Levy Calculation

8.4.1 A Notice of Determination of Market Value was issued Tinnelly Construction Limited on the 14th October 2019 stating that the valuation placed on the site is €600,00.00. No evidence from the appellant has been submitted to show that this valuation was appealed to the Valuation Tribunal.

8.4.2 A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to Tinnelly Construction Limited on the 26th February 2021 for the value of €42,000.00.

8.4.3 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.

9.0 Recommendation

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 2020 and was a vacant site on 24th March 2021, 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, 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 lack of information to show that the site was no longer a vacate site within the meaning of the Urban Regeneration and Housing Act 2015, as amended, on the 1 January 2020, and the site continued to be a vacant site on the day that the appeal was made.

The demand for payment of the vacant site levy as calculated by the planning authority under section 15 of the Urban Regeneration and Housing Act 2015, as amended, is, therefore, confirmed.

Dáire McDevitt
Senior Planning Inspector

30th April 2022