



An
Bord
Pleanála

Inspector's Report ABP-309806-21

Type of Appeal	Appeal against a Section 18 Demand for Payment
Location	Site bounded generally by the River Rad & Tolka Valley Park to the north, Crescent Park & Royal Canal Avenue, Royal Canal Park, Pelletstown House site & Rathborne, Ashtown. Dublin 15.
Planning Authority	Dublin City Council.
Planning Authority VSL Reg. Ref.	VS-0334
Site Owner	The Davy Platform ICAV
Date of Site Visit	22 nd February 2022 and 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 €354,200.00 (three hundred and fifty four thousand, two hundred euros). for vacant site Lands at 'Site bounded generally by the River Rad & Tolka Valley Park to the north, Crescent Park & Royal Canal Avenue, Royal Canal Park, Pelletstown House site & Rathborne, Ashtown. Dublin 15' and identified as VS-0334. The appeal site has one stated registered owner, The Davy Platform ICAV.
- 1.2. A Notice of Proposed Entry on the Vacant Sites Register was issued to Capel Developments Limited (in receivership) on the 19th June 2017. On the 28th July 2017 the Notice of Entry on the Vacant Sites Register was issued to Capel Developments Limited (in receivership). This section 7(3) notice was appealed to An Bord Pleanála (ABP 303758-19), and dismissed on the 29th May 2019.
- 1.3. A valuation pertaining to the site was issued by Dublin City Council on 18th May 2018 to Capel Developments Limited. The value of the subject site is stated to be €5,060,000.00 (A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to The Davy Platform ICAV on the 26th February 2021 for the value of € 354,200.00 The appellant (The Davy Platform ICAV.) 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 in Pelletstown, Ashtown, c. 5.5km north-west of Dublin City Centre. Pelletstown is a new outer-city mixed-use neighbourhood located between the Royal Canal and Tolka Valley Park. The area is characterised by residential and commercial development, with apartment and duplex development forming the dominant character for the area. To the south, the site bounds the Royal Canal, with playing fields located on the opposite side of the canal, beyond a railway line. To the west of the site is a six storey apartment block and the commercial centre of Ashtown with blocks up to eight storeys. Ashtown Rail Station is situated to the south of this commercial centre. To the east, apartment blocks range in height between

four and six/seven storeys in height, with five storeys focused on the canal edge. To the north of the site there are three and four / five storey duplex and apartment blocks on Rathborne Avenue.

The site, with a stated area of 5.1 ha and is formed out of a large undeveloped site fronting directly onto the Royal Canal. There is an extant permission for a SHD (725 apartments and crèche). The site slopes upwards from north to south creating a level change that equates to approximately a storey difference in height, with Rathborne Avenue being at the lowest point and the Royal Canal towpath being at the upper level. Beyond the canal lies the Dublin to Sligo railway line, a dense amount of vegetation divides the rail line from the canal.

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 28th 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

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

The site is zoned **Z14** with a stated objective *To seek the social , economic and physical development and/or rejuvenation of the area with mixed use of which residential and 'Z6' would be the prominent uses.*

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.

The lands are also located within Strategic Development and Regeneration Area: **SDRA 3**. Section 15.1.1.3 contain guiding principles.

The site is located within lands contained within the boundaries of the Ashtown Pelletstown Local Area Plan 2014.

5.0 Planning History

ABP 303758-19 refers to a s.18 appeal (Demand for Payment of Vacant site Levy) issued to Capel Developments Limited (appellants). Appeal lodged 19th February 2019. Dismissed on 29th May 2019 for the following reason:

“The Board is satisfied that, in the particular circumstances, the appeal should not be further considered by it having regard to the nature of the appeal and the subsequent decision of the planning authority to cancel the demand for payment of the vacant site levy for 2018 as a consequence of a change in ownership of the site.”

ABP 307656-20 refers to a 2020 grant of permission to Ruirside Development Limited for 725 apartments, creche and associated site works.

PA Ref. No. 2596/20 (ABP 308477-20 (appeal withdrawn)) refers to an application for permission for development at a site (c.1.66 Ha) known as the ‘Capel’ site, Pelletstown, Ashtown, Dublin 15. The site forms part of the wider ‘Capel’ site, and is bounded generally by Rathborne Avenue to the north and west, existing residential development adjoining Rathborne Drive and Royal Canal Way to the east and the remainder of the development permitted under DCC Reg. Ref. 3666/15 (ABP Ref PL29N.246373) to the south, at Pelletstown, Ashtown, Dublin 15. The development will consist of minor amendments to the development permitted under DCC Reg. Ref. 3666/15 (ABP Ref PL29N.246373) comprising changes to house types to 92 dwellings as follows: 25no. 2 storey, 3 bedroom house type units each of c. 105.3sq.m (Types HAL, HA, HALM , HAM and HAR) to replace 25no. house type C

units (2 storey, 3 bedroom); 17no. 3 storey, 4 bedroom house type units of c. 150.8sq.m (Types HB and HBM) to replace 12no. house type F units (3 storey, 4 bedroom) and 5no. 2 storey, 3 bedroom house type D units; 22no. 3 storey, 4 bedroom house type units each of c. 153.2sq.m (Types HCL, HC, HCM and HCR) to replace 22no. house type E units (3 storey, 4 bedroom); 10no. 3 storey, 4 bedroom house type units of c. 167.5sq.m (Types HDL and HDR) to replace 6no. house type K units (3storey, 4 bedroom), 1no. house type B unit (2 storey, 3 bedroom) and 3no. house type A units (2 storey, 3 bedroom); 18no. 2 storey, 3 bedroom house type units each of c. 102.8sq.m (type HEL, HELM, HERM and HER) to replace 6no.house type K units (3 storey, 4 bedroom) and 12no. house type A units (2 storey, 3 bedroom). A new substation (c. 11.5sqm) is also proposed with associated drop kerb access. All houses will include solar panels on the roofs, as previously permitted. Some minor changes to the arrangement of car parking spaces associated with the amendments to the 92 houses are also proposed. The amendments will not impact on the permitted street layout or overall number of houses permitted under DCC Reg. Ref. 3666/15 (ABP PL29N.246373).

VS-0334 Site is on the Vacant Site Register.

PA Reg. Ref. 3666/15 (ABP Ref. PL29N.246373) refer to a 2016 grant of permission for 278 dwellings, creche and associated site works. Subsequent Extension of Duration on 26 February 2021 for 5 years.

There is extensive planning history association with the wider Pelletstown area.

6.0 Planning Authority Decision

6.1 Register of Vacant Sites Report:

A copy of the 'Register of Vacant Sites Report' is not included with the documentation in documentation received from DCC on the 13th April 2021.

6.2 Planning Authority Notices:

6.2.1 Dublin City Council advised the site owner (The Davy Platform ICAV) that the subject site (Planning Authority site ref. VS0-0334) is now liable for a payment of 7% of its

valuation and hence the levy for 2020 is €354,200.00. Payment terms and methods are outlined.

- 6.2.2 Correspondence dated 15th April 2019 From DCC to Mazers confirms receipt of details regarding change of site ownership and that future correspondence will issue to the updated current owners. No levies therefore applied for 2018/2019 arising from change in ownership
- 6.2.3 A Notice of Determination of Market Value was issued to Capel Developments Limited on the 31st May 2018 stating that the valuation placed on the site is €5,060,000.00 and instructions to make an appeal to the Valuations Tribunal, accompanied by a map with the site outlined.
- 6.2.4 A section 7(3) Notice issued on 28th July 2017 advising the owner that their site had been placed on the register.
- 6.2.5 A section 7(1) Notice issued on the 19th June 2017, 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 Vacant Sites Register and against the Demand for Payment. The grounds of the appeal can be summarised as follows:

Site is Not Vacant/idle:

- The site is not vacant/idle in the context of section 5(b)(i).
- The site is part of the overall Ashtown Pelletstown LAP and it is the appellants intention to development the site within the overall LAP lands.
- The appellant acquired the site in 2019, therefore cannot be held responsible to the lack of development predating their acquisition.
- The site has been the subject of numerous pre-planning consultations and planning applications to DCC and ABP.

- The drainage design criteria has changed since the granting of permission in 2016, resolution of Irish Water issues was not achieved until 10th August 2020, therefore delaying any commencement of development. Extension of Duration received from DCC in 2021.
- Since the appellant acquired the site in 2019, it has not been vacant/idle as there has been ongoing activity to resolve drainage and water infrastructure requirements and in applying for planning permissions. Planning Compliance for 3666/15/x1 and ABP 307656-20 is in the process of being prepared/submitted for approval.
- The site is not in a ruinous or neglected condition.
- Request that the Board reject/refuse the demand for vacant site levy and to direct the planning authority to remove the site from the Vacant sites Register.

7.2 Planning Authority Response

The planning authority have provided a response to the appellant's grounds of appeal on the 17th May 2021 that include:

- The site is considered in the context of Section 5(1)(a) – Residential.
- The site remains within the meaning of Section 5 (1)(a) and 5(2) of the Act.
 - There is a need for housing in the area.
 - The site is suitable for housing
 - The site is vacant/idle.
- Where a site has an extant planning permission, this should not be considered in determining whether to apply the levy.
- Technical and funding reasons for not commencing development are not considerations in determining the application of the Vacant Site Levy. These may apply to Extension of Duration application but this is different legislation to Vacant Sites.
- Photographs submitted illustrate that the site remain vacant (2016 and 2021).
- The appellants have not submitted any evidence to suggest the subject site is no longer vacant.

- It is evident that the site remains vacant and no development has commenced on site.
- The levy calculation is correct.

Ownership:

- The site has changed ownership and had the benefit of a zero payment of levy during the time as provided for by the Act for the site. As the site was acquired 2019, the planning authority is satisfied that the levy is applicable for the year 2020.

Irish Water:

- The planning authority is satisfied that the site is adequately serviced and suitable for development. No evidence has been submitted from Irish Water to confirm that there are any infrastructural capacity or constraints or impediments that would prejudice or prevent the development of the site.
- Where a site has the benefit of planning permission, this should not be a consideration in determining whether or not to apply the levy.
- The resolution of compliance matters in relation to a planning permission attached to an extant permission are not, in the view of the planning authority a satisfactory reason to negate the imposition of the levy.

Adverse Effects on the Character of the Area:

- Section 6(6) relates to 'regeneration' Lands and not applicable as the lands are clearly 'residential'.
- Notwithstanding, the site is the largest remaining undeveloped portion of the overall Pelletstown lands and detracts from the streetscape and general environment in its current form.

7.3 Further Response

7.3.1 The appellant has provided a response to the Planning Authority's response of the 17st May 2021 on the 28th June 2021 as follows

- The response reiterates and refers to the formal grounds of appeal.

- Notes that their client has used their best endeavour to get on site and reiterate that there are considerations beyond the control of the appellants that substantially mitigate against the commencement of development.
- The permission the appellants inherited did not comply with IW Codes of Practice and therefore revised designed/engagement were required.
- Reference to FI requested by DCC in relation to the Extension of Duration application.
- Delays due to Covid 19 restrictions in addressing IW requirements and ability to start work on a construction site.
- Refer to the Core Strategy and SDRAs (Regeneration)
- With regard to section 5(1)(a) Residential, it is submitted that the site is not vacant/idle as the site has endeavoured to bring the site forward for development, delays in addressing IW requirements means that the appellant could not deliver housing. Works have commenced on site (site stripping)(photographs from 23rd June 2021).
- As of the date of this appeal the appellants have sought a number of pre-planning consultations, planning applications during the 2019-2020 period.
- Reference to the DCC erroneous description of the boundary fencing erected.

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, 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.

8.2 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) or 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.

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 28th July 2017. 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 under section 5(1)(a). Following an assessment the site was placed on the register, these matters have not changed.

8.3.2 The appellants have set out in the ground of appeal that the site is not vacant under the criteria contained in section 5(1)(b) of the Act. I note that DCC have assessed the site under section 5(1)(a) Residential. I refer the Board to Section 14.9 of the Dublin City Development Plan 2016-2022 which 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. I note that the site is location in SDRA 3 and this contains 'regeneration' in the title. However, the site is zoned Z14 therefore I concur with the planning authority that section 5(1)(a) applies. The appellant in their response to the planning authority submission set out why they. In their opinion, why the site is not vacant/idle in accordance with section 5(1)(a) of the Act.

8.3.3 The appellant has stated that the site was not vacant/idle during 2019-2020 as the appellant was engaged in pre-planning consultations, planning applications to bring the site forward for development They were also engaged with Irish Water since they acquired the site in 2019 to address issues associated with the extant permission on site (2016), a subsequent extension of duration. Compliance submissions to DCC was also prepared and submitted during this period. I note there is no provision in the legislation to prohibit the entry into the register on the basis that a planning

application for their future development may be progressed or that a site may have the benefit of an extant planning permission. The appellants in their correspondence also refer to delays arising from the Covid pandemic. Unfortunately, the 2015 Act does not make allowances for delays arising from the Covid Emergency.

8.3.4 I note that a detailed appeal has been lodged by the appellant, and further correspondence received on the 28th June 2021, this includes photographs dated 23rd June 2021. The June correspondence referred to photographs from the 14th December 2020 in the correspondence but has not identified them. The appeal which is before the board refers to a section 15 Demand for Payment Notice for the period 2020. I note photographs on file from the Planning Authority dated 20th June 2016 and 7th May 2021 in appendix 1 of the planning authority's response to the appeal. I also direct the Board to ABP 307656-21 and the Inspectors description of the site as 'undeveloped', a site inspection for this application was carried out on the 14th October 2020.

8.3.5 In terms of the current appearance of the site, I notice that the site has been the subject of development. However, the current condition of the site is not relevant in this instance, as no use for the site was advanced by the owner for the year 2020. Photographs submitted refer to 2021 and postdate the appeal. The section 15 levy which is the subject of this appeal applies for the year 2020. Based on the information submitted, the evidence presented by the Planning Authority, the lack of specific evidence submitted by the appellant concerning the year 2020 I am satisfied that for the period concerned, 2020, the site remained a vacant site.

8.4 Levy Calculation

8.4.1 A Notice of Determination of Market Value was issued to Capel Developments Limited (in receivership) on the 31st May 2018 stating that the valuation placed on the site is €5,060,000.00. 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 The Davy Platform ICAV on the 26th February 2021 for the value of € 345,200.00.

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 25th March 2021, 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 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, or that the amount of the levy has been incorrectly calculated in respect of the site by the planning authority, 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

2nd May 2022