



An
Bord
Pleanála

Inspector's Report ABP-309821-21

Type of Appeal	Appeal against a Section 18 Demand for Payment
Location	2A Fassaugh Avenue and site to rear.
Planning Authority	Dublin City Council North
Planning Authority VSL Reg. Ref.	VS-0453
Site Owner	R&D Developments Limited
Date of Site Visit	15 th October 2021
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 €364,000 for vacant site Lands at 2A Fassaugh Avenue and site to rear and identified as VS-0453. The appeal site has one stated registered owner R&D Developments Limited.
- 1.2. A Notice of Proposed Entry on the Vacant Sites Register was issued to R&D Developments Limited on the 18th July 2019. On the 26th August 2019, the Notice of Entry on the Vacant Sites Register was issued to R& D Developments Limited. 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 10th September 2019. The value of the subject site is stated to be €5,200,000.00. A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to R&D Developments Limited on the 26th February 2021 for the value of €364,000.00. The appellant (R&D Developments 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, with a stated area of c. 0.54 hectares, is located on the northern side of Fassaugh Avenue. It is bounded to the south by two-storey houses which front onto St. Attracta's Road, to the east by Lanigans Funeral Home, the western boundary is formed by the railway line at lower level than the site and two-storey housing beyond on Bannow Road. Fassaugh Avenue forms the only road frontage along the southern boundary.
- 2.2 The site at present contains the former 'Matts of Cabra' public house which is in a state of dereliction. Permission has been granted for its demolition under previous schemes permitted on this site. The bulk of the site is located to the rear of the former public house and lands to the rear of 2A Fassaugh Avenue. It is a long, narrow site with limited views into the site from the public domain. It is overgrown, with evidence of anti-social behaviour. The front of the site bounding Fassaugh

Avenue is used for ad hoc parking at present. There is a surface parking outside the adjoining funeral home.

- 2.3 A SHD (Hamilton Gardens) permitted in 2020 on former CIE lands is under construction and visible from the site.

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)(b) of the Act. A section 7(3) Notice was issued 3 December 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 bulk of the site is zoned **Sustainable Residential Neighbourhoods Z1** – with the stated objective *To protect, provide and improve residential amenities.*

A portion of the site to the front is zoned **Neighbourhood Centres Z3** – with an objective *To provide for an improve neighbourhood centre facilities.*

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 312859-22 refers to a current application for 117 apartments.

Decision due 15th June 2022.

ABP Ref. 300666-18 refers to a 2018 grant of permission for the demolition of the former 'Matts of Cabra' public house and associated structures; The construction of a mixed use development comprising student accommodation consisting of 208 no. ensuite student accommodation bedrooms - 198 no. bedspaces in 32 no. house units (ranging in size between 4 and 8 single bed ensuite rooms) in a linked four and five storey building and 10 no. single bed ensuite studio rooms in a three storey building, and associated facilities including a central access lobby, a central hub,

recreation spaces, administration areas at basement and ground floor levels - and 657.65 sq.m of retail floor space in 2 no. units fronting onto Fassaugh Avenue - 368.47 sq.m on the basement, ground and first floors of the four/ five storey building and 289.18 sq.m on the basement and ground floors of the three storey building; The construction of a vehicular access onto Fassaugh Avenue and the provision of a vehicle set down in front of the four/ five storey building; and All other site development works including landscaped gardens and open amenity areas, a roof garden on the Fassaugh Avenue side of the linked four/ five storey building, the provision of 9 no. surface car parking spaces (including 1 no. disabled space), 114 no. cycle parking spaces, a covered bin store, an ESB substation and switch room and the formation of a public plaza on the Fassaugh Road frontage including the provision of 2 no. visitor car parking spaces.

PA Reg. Ref. 3420/16 Planning permission granted for 4-storey development comprised of 19 no. residential units and 1 no. retail unit.

PA Reg. Ref. 3942/04 Permission granted for a 3-storey development over basement car park comprising residential (28 units), Public House and Bookmakers Office.

VS-0453 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 and Regeneration. The following key points are noted:

Site visit were undertaken on 27/06/2019.

Aerial Images for 2016 are included in the report.

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

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
 - (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 purposes of such provision, provided that the most recent purchase of the site occurred –
 - a. after it became residential lands, and
 - b. before, on or after the commencement of section 63 of the Planning and Development (Amendment) Act 2018.

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

- (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 in the area in which the site is situated or has adverse effect on the character of the area.

6.2 Planning Authority Notices:

- 6.2.1 Dublin City Council advised the site owner that the subject site (Planning Authority site ref. VS0453) is now liable for a payment of 7% of its valuation and hence the levy for 2020 is €364,000.00. Payment terms and methods are outlined.
- 6.2.2 A Notice of Determination of Market Value was issued to R&D Developments Limited on the 14th October 2019 stating that the valuation placed on the site is €5,200,000.00 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 18th July 2019, advising the owner that their site had been identified as a vacant site and invited submissions, accompanied by a site map.

7 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:

- Dublin City Council applied the wrong test when interpreting the Act and how it applies to the site.
- The site was not vacant/idle during 2019. Specialist contractors were carrying out enabling works, geological investigations and engineering surveys along with regular construction activities one would associate in bringing a site to construction stage.
- Between 2019 and the date of the appeal the appellant's contractors have dealt with a number of serious anti-social incidents.
- Then the Covid pandemic ground the construction to a halt, this situation is ongoing.
- Specialists have been engaged to commence demolition works, these are pause in line with current covid guidelines.

7.2 Planning Authority Response

The planning authority have provided a response to the appellant's grounds of appeal on the 13th May 2021 and 17th May 2021 (clarification of a drafting error) that include:

- The site remains vacant in accordance with the criteria set out in section 5(1)(a) and 5(1)(b),
- There is a need for housing in the area.
- The site is suitable for housing.

- Whilst it is acknowledged that permission has been granted for a large residential development (Student accommodation), no construction activity has commenced and it is evident that the site remains vacant and idle and no development has commenced on the site.
- 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. Site investigations and surveys do not constitute development.
- The Act is only concerned with the actual use on site and whether it is performing a specific purpose in order to determine if a site is vacant/idle. In this instance the site is clearly vacant at present and appears to have been the case during the intervening period. The Planning Authority are satisfied that the site was a vacant site for the relevant time period and continues to be a vacant site.
- The appellant has not submitted any evidence to suggest that the subject site is no longer vacant.
- With regard to 5(1)(b) the lands are considered to be in a neglected condition and they have an adverse effect on existing amenities, particularly adjacent residential properties. The Planning Authority are satisfied that the tests of section 6(6) of the Act- 'land or structure in the area were, or area, in a ruinous or neglected condition' and (b) anti-social behaviour was or is taking place in the area are met in this regard.
- The Levy rate applicable in this instance is 75. It is evident, therefore, that the levy calculation has been correctly calculated.
- It is the Planning Authority's view that the site remains a vacant site for the purposes of the Urban Regeneration and Housing Act 2015 as amended and is therefore, liable to a demand for payment of the applicable levy. There are no substantial grounds provided by the agent to deny payment of the levy demand to Dublin City Council other than issues that fall outside the remit for which the Vacant Site Levy was intended.

7.3 Further Response

The appellant has provided a response on the 22nd June 2021 as follows:

- Permission granted in 2018 by An Bord Pleanála for a SHD development comprising student accommodation (208 bedspaces) and retail floor space.
- This application albeit delayed due to the Covid pandemic is ongoing.
- The appellant agrees that the site is suitable for housing but does not agree that it was vacant or idle on the 1 January 2020 or 22nd March 2021.
- Reference to *Navratil v An Bord Pleanála* regarding the interpretation of 'vacant or idle'.
- The property was at all times being prepared for construction, whether by way of lodging an application or by carrying out preparatory and investigative works on the property.
- As such the Board (As expressed in *Navratil*) should consider that the property was in fact occupied and in use during the relevant period.
- Without Covid Pandemic delays the site would likely have been actively under construction on 22 March 2021. The levy should not be imposed where it arises only in circumstance beyond the appellants control and as a result of Government regulations-

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) and 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 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. I note that the appellant has argued that the site was not vacant during the relevant period but no section 9 appeal was made.

8.3.2 The appellant has stated that the site was not vacant/idle during 2019. Specialist contractors were carrying out enabling works, geological investigations and engineering surveys along with regular construction activities one would associate in bringing a site to construction stage. 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.

8.3.3 The owner has argued that the site investigations and surveys mean the site was occupied for the relevant period and therefore not vacant or idle. Site investigations and surveys do not constitute development or a use. The appeal grounds 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 In terms of the current appearance of the site, I notice that the public house along Fassaugh Avenue is boarded up and access to the site is via locked gates. This means that all of these lands cannot be readily viewed from the public demesne. Within the site, the area is overgrown and there is evidence of dumping, and antisocial behaviour, with access opened through fencing to adjoining areas in places. Whether the site can or could have been seen from the street is not relevant in this instance, as no use for the site has been advanced by the owner. 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 change to be levied.

8.4 Levy Calculation

- 8.4.1 A Notice of Determination of Market Value was issued to R&D Developments Limited on the 14th October 2019 stating that the valuation placed on the site is €5,200,000.00. 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 R&D Developments Limited on the 26th February 2021 for the value of €364,000.00.
- 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 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

27th February 2022