



An
Bord
Pleanála

Inspector's Report

ABP-309823-21

Type of Appeal	Appeal against a Section 18 Demand for Payment
Location	6 Kilmainham Lane, Dublin 8.
Planning Authority	Dublin City Council.
Planning Authority VSL Reg. Ref.	VS-0005
Site Owner	Helixmain Enterprise Limited
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 €66,500.00 for vacant site Lands at 6 Kilmainham Lane, Dublin 8 and identified as VS-0005. The appeal site has one stated registered owner Helexmain Enterprise Limited.
- 1.2.** A Notice of Proposed Entry on the Vacant Sites Register was issued to owner Helexmain Enterprise Limited on the 8th July 2019. On the 20th August 2019, the Notice of Entry on the Vacant Sites Register was issued to owner Helexmain Enterprise Limited. This section 7(3) notice was not appealed to the Board.
- 1.3.** A Notice of Determination of Market Value pertaining to the site was issued by Dublin City Council on 29th October 2019. The value of the subject site is stated to be €950,000.00. A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to owner Helexmain Enterprise Limited on the 26th February 2021 for the value of €66,500.00. The appellant (Helexmain Enterprise 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. 0.11 hectares, is located along Kilmainham Lane in the south Dublin inner city suburb of Kilmainham. The site contains a recently refurbished house along Kilmainham Lane and associated lands. Level fall steeply towards the Camac River. There area has a mixture of terraces houses, in different state of repair and some small apartment developments.

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 relevant Plan is the Dublin City Development Plan 2016-2022

The site is located on lands zoned **Sustainable Residential Neighbourhoods Z1** – with the stated objective *To protect, provide and improve residential amenities.*

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.

Site is in Flood Zone A and B.

5.0 Planning History

PA Reg Ref. 6705/07 refers to a grant of permission for a mixed use development consisting of 58 apartments and commercial space.

VS-0005 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 04/05/2016, 25/01/2019

Aerial Images for 2016 and 2019 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 Planning Authority Notices:

6.2.1 Dublin City Council advised the site owner that the subject site (Planning Authority site ref. VS0005) is now liable for a payment of 7% of its valuation and hence the levy for 2020 is €66,500.00 Payment terms and methods are outlined.

6.2.2 A Notice of Determination of Market Value was issued to Helixmain Enterprise Limited on the 29th October 2019 stating that the valuation placed on the site is €950,000.00 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 20th 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:

a) The site was no longer a vacant site on the 1st January 2020.

- The property is being reinstated for residential use.
- Works commenced in May 2020, delays arose due to covid restrictions. Appendix 1 (Invoices for works), Appendix 2 (photographs form before works), Appendix 3 (current status of house).
- Information issued to DCC regarding scale of works carried out.
- DCC considered the development in the context of the whole site and not against the part of the site that can be developed.
- Appendix 4 (OS Map) shows steep regress to river. Appendix 5, 6 & 7 (photographs) show site context.
- Development has been undertaken rendering dwelling fit for residential letting.
- The provision of outdoor garden facilities made safer by removal of trees and erection of fence,
- Provision of parking for future tenants.
- Site restored to original format (house and garden).
- The development is a development of the majority of the available site.

b) The amount of levy has been incorrectly calculated by the Planning Authority.

- Site valued between €400.000 and €500.000.
- The Vacant site levy for 2020 is an unfair calculation and furthermore should not be levied as it was not vacant for 2020.

7.2 Planning Authority Response

The planning authority have provided a response to the appellant's grounds of appeal on the 21st May 2021.

- The site remains vacant in accordance with the criteria set out in section 5(1)(a).
- There is a need for housing in the area.
- The site is suitable for housing. Reference to the planning history of the site which deemed it suitable for housing.
- The applicant has stated that they are financially unable to develop the site. There is no provision in the legislation to discount the suitability of the site for housing on other grounds apart from 'anything affecting the physical condition of the land'
- Nothing has been identified by the appellant which would affect the physical condition of the lands which may affect the provision of housing. The topography of the site and the flood zone is noted, however it is not considered that this would negate against the development of the site, subject to an appropriate design response and site specific flood risk assessment,
- The site is over 0.05ha. Notwithstanding the claim that ground works and site clearance has occurred, The majority of the site remains overgrown. It is considered that the majority of the site is idle and vacant.
- The interventions to the existing dwelling appear to have taken place since the appeal was lodged in March 2021 and therefore have occurred outside the year in question (2020). It can therefore be concluded that the site was vacant of the period of time up until the appeal was lodged and is, therefore, subject to the levy proposed. The appellant has not submitted any adequate evidence to suggest the dwelling was in habitable use for the year 2020.
- As far as the Planning Authority is concerned, for the year for which the levy applies, the site was not developed, nor was the existing dwelling in habitable use.

- With regard to provisional site clearance and interior works to the dwelling in 2020. 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 was no longer vacant on the 1st January 2020. The majority of the site remains in poor condition, heavily overgrown and vacant. Recent interventions took place post March 2021 and the property was vacant for the year which is the subject of this appeal.
- The dwelling on site was not a habitable structure in 2020.
- The Levy rate applicable in this instance is 7%. It is evident, therefore, that the levy calculation has been correctly calculated.
- It is the Planning Authority's view that, notwithstanding the refurbishment of the existing dwelling since the appeal was lodged, the site can still be considered a vacant site for the year in question (2020) under 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.
- The remainder of the site, which constitutes the majority of the lands, are heavily overgrown and no evidence of site clearance has taken place. It is considered that the remainder of the site does not constitute a garden or amenity area associated with the dwelling. In this regard, it is considered that the use of the existing building on site has only recently occurred and, therefore, the Council area satisfied that the site was vacant in nature for the year in question beginning 1st January 2019.
- 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 Responses

7.3.1 The appellant has provided a response to the Planning Authority's response of the 21st May 2021 on the 14th June 2021 as follows:

- The previous planning permission is irrelevant as it has withered.
- The site area was c.0.3ha and extended both sides of the Camac River. The development proposal was contingent on the amalgamation of two properties.
- The VSR map contains land to the north of the river and the valuation is related to a single residential property that is on the street front on a very narrow laneway.
- The area of the subject site is 0.1ha. It is a house and garden and is currently occupied as such.
- There is no extant permission on the site and no guarantee DCC would grant permission for the demolition of a street front house.
- The appellant engaged with DCC throughout 2020 and DCC should have cancelled the entry onto the Register.
- DCC are disregarding that the site contains a house and garden and are not capable of being developed independently.
- The site has an area of 0.1ha not 0.5ha as referenced in the Senior Planner report (potentially a typo).
- DCC valuation is map based and not site based. The valuation of €950,000.00 implies a valuation of €9,500,000.00 per hectare. The site is a house and garden.
- The rear of the site is a sheer cliff to the river and the site is the subject of flood risk assessment. Reference to 4005/19 at 18 Old Kilmainham citing flood risk as a reason for refusal.
- It is submitted that the levy has been improperly applied to a domestic residence.

- Request that ABP confirms that the site was not vacant during 2020 and instructs the PA to cancel the s.15 demand.

7.3.2 The Planning Authority has provided a response to the Applicant's response of the 14th June 2021 on the 8th July 2021 as follows:

- The vacant levy which is the subject of the appeal relates to the year 2020 only. Notwithstanding that the house is now currently in use in 2021, the majority of the lands for the year 2020 were vacant and therefore subject to the section 15 Demand for payment of Vacant Site Levy.
- The site is capable of being developed, this could involve either the demolition of the existing house or its retention. Applications are assessed on a case by case basis.
- There is no legislative context regarding covid 19 restriction that would defer the application of the vacant site levy.
- The house and attendant grounds were vacant in 2020.
- The site is in excess of 0.05ha and falls under the definition of a vacant site.
- With regard to the valuation of the lands being untenable. This is outside the scope of the appeal. The Board can only adjudicate whether the levy rate was correctly applied and not determine matters relating to the merits of the actual valuation.
- The appellant makes reference to an application nearby that was refused permission on the grounds of flood risk. Each application is assessed on its merits and on a case by case basis. Applications in flood risk areas require SSFRA as part of the application process.
- DCC considered pictures that accompanied the appeal
- Site is appropriate for inclusion on the register and s.15 demand for payment should be pursued for the year 2020.

7.3.2 The Applicant has provided a response to the Planning Authority's response of the 8th July 2021 on the 10th August 2021 as follows:

- House is in use (2021).

- Works were ongoing through 2020, this information was made available to DCC in 2020.
- Photographs (4th August 2021) showing the context of Kilmainham lane, house, rear garden, fence, etc).
- The steep slope and trees show there are no other areas suitable for development.
- It is appreciated that there is no planning context regarding covid 19, but there was a societal obligation to suspend all construction activity during the lockdowns.
- The site and house occupy a single planning unit. The nature of the land profile restricts development.
- The site should exclude the family home, therefore any developable area is below 0.05ha.
- It is inappropriate for the Planning Authority to dismiss the flood risk and the history of flooding associated with that river.
- The Board can adjudicate if the levy has been applied incorrectly.
- Significant level of information absent from the Planning Authority's demand for the application of the VSL payment.

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) 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 20th 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 site was not vacant/idle during 2020. That works commenced in May 2020 to reinstate the house to habitable condition and site clearance was taking place. The appellant has noted that they sent correspondence to DCC in 2020 highlighting that works had commenced to reinstate the house.

8.3.3 The owner has argued that as works to reinstate the house and bring it to a suitable condition for letting commenced in May 2020 and then delayed due to covid 19 restriction means the site was occupied for the relevant period and therefore not vacant or idle. Unfortunately, the 2015 Act does not make allowances for delays arising from the Covid Emergency.

8.3.4 The appellant has argued that works commenced on site in May 2020, The Planning Authority are of the view that the works in question took place after the appeal was lodged in 2021. I note that a detailed appeal has been lodged by the appellant, this includes photographs (not dated) and maps and was followed up with 2 further response to issues raised by the Planning Authority in its reposes to applicant's appeal and correspondence which include photographs taken on 4th August 2021. 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 25/01/19 (original VSL) and 17th May 2021 (accompany the PA response to appeal).

8.3.5 In terms of the current appearance of the site, I notice that the house (No. 6 Kilmainham Lane) has been refurbished and reinstated to its original domestic use and appears occupied (5th March 2022). The remainder of the site cannot be readily viewed from the public demesne. Within the site, the area to the rear is overgrown with a significant drop in levels to the adjoining river. Whether the site/house is currently occupied or the site can or could have been seen from the street is not relevant in this instance, as no use for the site was advanced by the owner for the year 2020. Which is the crux of this 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 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 Helexmain Enterprise Limited on the 29th October 2019 stating that the valuation placed on the site is €950,000.00. I note that the appellant has submitted that the Planning Authority calculated the levy on the basis of a site with an area of 0.1ha, this includes the house which is occupied as a dwelling. I acknowledge that the applicant has stated that the dwelling in question was occupied since August 2021 (applicant's submission received 10th August 2021). The condition of the site, its use and occupation in 2021 does not affect the Demand for Payment for the year 2020.

8.4.2 With regard to the developable area of the site, the levy is calculated on the basis of the site registered under the section 7(3) Notice. I note that the site area was not disputed at the time. It is also acknowledged by the appellant that for the period affected by the s.15 Demand for Payment Notice (2020) the house was not occupied as needed to be reinstated as a dwelling. No evidence from the appellant has been submitted to show that this valuation was appealed to the Valuation Tribunal.

- 8.4.3 A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to Helexmain Enterprise Limited on the 26th February 2021 for the value of €66,500.00.
- 8.4.4 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

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

5th March 2022