



An
Bord
Pleanála

Inspector's Report

ABP-309827-21

Type of Appeal	Appeal against a Section 18 Demand for Payment
Location	1-15 Brookfield Road, Kilmainham, Dublin 8.
Planning Authority	Dublin City Council.
Planning Authority VSL Reg. Ref.	VS-0002
Site Owner	Brookfield Property Limited
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 €112,000.00 (one hundred and twelve thousand euro) for vacant site Lands at 1-15 Brookfield Road, Kilmainham, Dublin 8 and identified as VS-0002. The appeal site has one stated registered owner Brookfield Properties Limited.
- 1.2.** A Notice of Proposed Entry on the Vacant Sites Register was issued to owner EWR Investments Limited on the 1st March 2017. On the 12th April 2017, the Notice of Entry on the Vacant Sites Register was issued to owner EWR Investments 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 31st May 2018. The value of the subject site is stated to be €1,600,000.00 (one million six hundred thousand euro). A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to owner Brookfield Properties Limited on the 26th February 2021 for the value of €112,000.00. The appellant (Brookfield Properties 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. 0.2561 hectares, is located along Brookfield Road in the south Dublin inner city suburb of Kilmainham. The site has been cleared and no remnants of no. 1-15 Brookfield Road remain. The road level along the site frontage fall steeply towards Kilmainham Road. There area has a mixture of terraces houses, in different state of repair and some small apartment developments. The site is c.90m from the site of the National Paediatric Hospital which is currently under construction.

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 12th April 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 the Dublin City Development Plan 2016-2022

Variation No. 19 change the site zoning from Z6 Employment/Enterprise with the stated objective *To provide for the creatin and protection of enterprise and facilitate opportunities for employment creation* to Z1 Sustainable Residential Neighbourhoods with a 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 C.

5.0 Planning History

ABP Ref, No. 312072-21 refers to an appeal (November 2021) that was withdrawn relating to a PA **(2725/21)** 2021 grant of permission for a build-to-rent residential development. The application site is bounded by Brookfield Road to the west and south west, 75-79 Old Kilmainham Road to the north, 28 Brookfield Road to the south and the rear gardens of the residential properties located on Cameron Square to the east and south east. The description of the proposed development is as follows:• The construction of a part two to part six storey building, over lower ground/basement level, comprising 79 no. build-to-rent (BTR) apartments, resident support facilities, and resident services and amenities. • The 79 no. BTR apartments comprise 14 no. studios, 48 no. 1 beds and 17 no. 2 beds (including 1 no. 2 bed duplex apartment). 54 no. of the apartments are provided with balconies/terraces on the northern, north eastern, southern and south western elevations of the building. • The development includes ancillary BTR resident support facilities and resident

services and amenities with a total GFA of 648 sqm, including bin storage and cycle storage at lower ground floor/basement level and reception, laundry, communal amenity areas, resident's workspace, games room and gym at ground floor level. • The proposal includes communal open space areas at lower ground, ground, including children's play space, and first floor level and roof terraces at fourth, fifth and sixth floor level. The development also includes a stair/lift core pop-up and solar panels at sixth floor/roof level. • The development is served by 18 no. car parking spaces, 140 no. bicycle parking spaces, 2 no. motorcycle space, plant rooms and bin storage areas at lower ground floor/basement level. 26 no. bicycle spaces are also provided at surface level. • The proposal includes a vehicular entrance from Brookfield Road, foul and surface water drainage, hard and soft landscaping, an ESB sub-station, and all ancillary site development works necessary to facilitate the development. (Public realm works (inclusive of alterations to the existing footpaths) external to the planning application site boundary will be subject to agreement with the Planning Authority). **The address is given as The Former Fodhla Printing Works site, Brookfield Road, Kllaminham, Dublin 8.**

There are a number of other planning applications relating to the site but given the extant nature of 2725/21 above I have not included other,

VS-0002 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 was Residential at the time of the section 7(3) Notices (2017) and the Determination of Market Valuation Notices (2018) The following key points are noted:

Site visits were undertaken on 4th May 2016 and 18th April 2019

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

The Planning Authority stated that the site was considered vacant in accordance with section 5 of the Urban Regeneration and Housing Act

6.2 Planning Authority Notices:

6.2.1 Dublin City Council advised the site owner (Brookfield Properties Limited) that the subject site (Planning Authority site ref. VS0002) is now liable for a payment of 7% of its valuation and hence the levy for 2020 is €112,000.00. Payment terms and methods are outlined.

6.2.2 There is an email dated 7 June 2018 from Joe Dunne (Dunne Construction) on the DCC VS-0002 file submitted to An Bord Pleanála referring to the change of ownership of the site in September 2017.

6.2.3 A Notice of Determination of Market Value was issued to the EWR Investments Limited on the 31st May 2018 stating that the valuation placed on the site is €1,600,000.00 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 12th April 2017, advising the owner that their site had been placed on the register.

6.2.5 A section 7(1) Notice issued on the 1st March 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 Register and charge the levy. The grounds of the appeal can be summarised as follows:

DCC did not follow procedure relating to entry onto the Vacant Sites Register or Notification of site valuation:

- The appellant had not been contacted by DCC and was not aware that the site was on the Vacant Sites Register and subject to a levy.
- No notification from DCC to the appellant regarding notice to enter on the register or notice of market valuation.

Site is not vacant:

- Appellant has been working to obtain planning permission since the site was purchased in September 2017.
- Appellant is engaged with DCC Planning Department and hopes to achieve planning permission for c.80 rental apartments.
- Appellant feels they are being unduly penalised for trying to achieve the best outcome for their site.
- Site topographical survey carried out in November 2017 and a suite of professional' fees paid to date.
- November 2018 DCC contacted the appellant regarding squatters on site and anti-social behaviour, these were removed and buildings that had been unlawfully occupied demolished.
- Machinery has been on site, test holes dug and drilling /site investigations.
- In essence preparatory works have been ongoing since 2017.

7.2 Planning Authority Response

The planning authority have not provided a response to the appellant's grounds of appeal.

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 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)(b) 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 12th April 2017 to EWR Investments Limited. No Section 9 appeal was made to the Board. An 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.
- 8.3.2 Since the Section 7(3) Notice was issued which based vacant on the criteria for Regeneration lands based on the Z6 land use zoning at the time. Variation No. 19 of the Dublin City Development Plan 2016-2022 was adopted on 10th March 2020 which postdates the entry of the site onto the Register. Therefore DCC were correct at the time to assess the site as Regeneration lands under section 5(1)(b) and issue the notices accordingly.
- 8.3.3 The appellant has stated that the site is not vacant/idle and has been the subject of 'preparatory' work for the purposes of development since Brookfield Properties Limited purchased the site and has been the subject of surveys, site investigation works, etc. The appellant has outlined in the ground of appeal that they did not receive notification from DCC regarding section 7(3), section 12(4) Notice or section 11(1) Notice. I note the chronology of the notices relating to the site and the site was on the Vacant Site Register on 12th April 2017. The appellants have stated that they purchased the site in September 2017, this post-dates the entry of the site onto the register. With regard to the notification of the Determination of Market Value I note that this was issued to EWR Investments Limited on the 31st May 2018. An email from Joe Dunne sent to DCC on the 7th June 2018 stated "Please note EWR Investments sold said site last September." An email is on file from DCC to Joe Dunne on the 11th June 2018 requesting details of sale and new owners. There is no

record of a response to this on file. I do however note the Section 15 Demand for Payment Notice was issued to Brookfield Properties Limited.

- 8.3.4 The appellant has argued that surveys, site investigations and that discussions with DCC Planning Department have been ongoing since they purchased the site and therefore is not vacant as they are carrying out 'preparatory' works or the purposes of bring the site forward for development.
- 8.3.5 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 18/04/2019 and reference to photographs from May 2016 (original VSL).
- 8.3.6 In terms of the current appearance of the site, I notice that the site has been cleared, there are no remnants of structures on site and the site is secured. The bulk of the site cannot be readily viewed from the public demesne due to the existing boundary treatment. Within the site, parts are overgrown and as stated above there is evidence of site clearance. Whether the site 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 charge to be levied.

8.4 Levy Calculation

- 8.4.1 A Notice of Determination of Market Value was issued to EWR Investments Limited on the 31st May 2018 stating that the valuation placed on the site is €1,600,000.00. I note that the appellant has submitted that they did not receive notification of the Market Valuation and therefore DCC did not follow correct procedure. I am satisfied that DCC followed correct procedures. Section 7(3) Notice were issued on the registered owners at the time the site was entered onto the Register. The appellants have confirmed that they purchased the site in September 2017. An email dated 7th June 2018 to DCC outlined that the site had changed ownership in September 2017.
- 8.4.2 Section 17 of the Urban Regeneration and Housing Act 2015 states that where there is a change in ownership in any given year, the amount charged shall be zero in

respect of that year and the preceding year. This does not arise in this instance as the levy which the subject of this appeal is for the year 2020.

- 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 Brookfield Property Limited on the 26th February 2021 for the value of €112,000.00
- 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 26th 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

1st May 2022