



An
Bord
Pleanála

Inspector's Report ABP-309949-21

Type of Appeal	Appeal against a Section 18 Demand for Payment.
Location	Lands at Weavers Row, Clonsilla Road, Dublin 15.
Planning Authority	Fingal County Council.
Planning Authority VSL Reg. Ref.	VS/0124.
Site Owner	Anne O'Neill.
Date of Site Visit	06 September 2021.
Inspector	Stephen Rhys Thomas.

1.0 Introduction

- 1.1. This appeal refers to a Section 15 Notice of Demand for Payment of Vacant Site Levy issued by Fingal County Council, stating their demand for a vacant site levy for the year 2020 amounting to €129,500 for vacant site Lands at Weavers Row, Clonsilla Road, Dublin 15 and identified as VS/0124. The appeal site has one stated registered owner Anne O'Neill.
- 1.2. A Notice of Proposed Entry on the Vacant Sites Register was issued to Anne O'Neill on the 24 September 2019. On the 3 December 2019, the Notice of Entry on the Vacant Sites Register was issued to Anne O'Neill. This section 7(3) notice was appealed to the Board on the 20 December 2019. On the 8 April 2020, the Board confirmed the notice and determined that the site is a vacant site within the meaning of the Act.
- 1.3. A valuation pertaining to the site was issued by Fingal County Council on the 10 January 2020. The value of the subject site is stated to be €1,850,000. A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to Anne O'Neill on the 23 March 2021 for the value of €129,500. The appellant (Anne O'Neill) 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 subject site has an area of c. 0.75 ha is located in an area known as Weavers Row on the Clonsilla Road. The site is located adjacent to the Church of Jesus Christ of Latter Day Saints. To the east, is a larger parcel of undeveloped brownfield land. Development in the vicinity is primarily low density and suburban housing.
- 2.2. The site itself is not visible from the public road as it is located behind a black screening material affixed to metal fencing. The site accommodates a derelict single storey cottage. The fenestration on the dwelling is blocked up and the roof is in poor condition. The site is generally overgrown, unkempt and has a neglected appearance.
- 2.3. There is a low block wall and c. 2m high mesh fence running along the northern boundary with the Clonsilla Road. There is a locked mesh gate to the western part of

the site restricting access. There is a further galvanised gate on the western boundary. All of these fences/gates have a dense screening material attached, that blocks a direct view into and of 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**

4.1. The **Fingal County Development Plan 2017 – 2023** is the operative development plan. As shown on Sheet 13 Blanchardstown South, the site is shown within the TC – Town and District Centre land use zoning where the objective is to: Protect and enhance the special physical and social character of town and district centres and provide and/or improve urban facilities. The vision for this land use is to maintain and build on the accessibility, vitality and viability of the existing Urban Centres in the County. Develop and consolidate these Centres with an appropriate mix of commercial, recreational, cultural, leisure and residential uses, and to enhance and develop the urban fabric of these Centres in accordance with the principles of urban design, conservation and sustainable development. Retail provision will be in

accordance with the County Retail Strategy, enhance and develop the existing urban fabric, emphasise urban conservation, and ensure priority for public transport, pedestrians and cyclists while minimising the impact of private car based traffic. In order to deliver this vision and to provide a framework for sustainable development, Urban Centre Strategies will be prepared for centres in accordance with the Urban Fingal Chapter objectives. The site is within an 'Urban Framework Plan' area.

4.2. Chapter 3 of the Development Plan sets out the Council's objective in relation to Vacant Sites. Relevant objectives include:

- Objective PM24 - Identify and secure the redevelopment and regeneration of areas in need of renewal.
- Objective PM25 - Implement the Vacant Sites Levy for all vacant development sites in the County and prepare and make available a Register of Vacant Sites, as per the requirements of the Urban Regeneration and Housing Act 2015.

4.3. Land Use Zoning Objectives - 11.7 Vacant Land Levy – Residential and Regeneration Lands:

The Urban Regeneration and Housing Act 2015 sets out two broad categories of vacant land that the levy may apply to:

- Lands zoned primarily for residential purposes
- Lands in need of regeneration

The following lands zoned for residential or primarily residential purposes are included for the purposes as set out in the Urban Regeneration and Housing Act 2015 in relation to the vacant land levy:

RS and RA zoned lands as they have capacity to provide residential accommodation.

The following zoned lands are included as lands with the objective of development and renewal of areas in need of **regeneration**:

LC & TC mixed use zonings as they offer great potential for the significant supply of housing and employment space, as set out in their Zoning Objectives. Furthermore,

the local and town centre zoned lands are included given their critical role for sustainable neighbourhoods and wider communities.

MC zoned lands are included as there are significant vacant lands in this zone which provide an opportunity for the County and given the Zoning Objective: “protect, provide for and/or improve major town centre facilities.”

GE zoned lands are included because the Objective is “provide opportunities for the general enterprise and employment.” The primary objective is to facilitate long-term economic development in the region.

Clonsilla is identified as a Consolidation Area Within Gateway within the Metropolitan Area.

Clonsilla is identified as a local centre with a limited number of retail and other commercial activities. It is stated that there are important pockets of undeveloped lands within the village which can provide opportunities for consolidation of the existing dispersed linear character of the village and realise the potential of the Royal Canal as a valuable amenity. There are a number of policies including:

Objective Clonsilla 1: Prepare an Urban Framework Plan to guide and inform future development; and to include measures to improve and promote the public realm of the village, in addition to traffic calming measures along the main street from St Mary’s Church of Ireland to St. Mochta’s National School.

Objective Clonsilla 2: Develop key sites within the village for mixed use including a residential component to enhance the viability and vitality of the village while ensuring new developments do not exceed three storeys.

Clonsilla Urban Centre Strategy 2008

The purpose of this Strategy Document is to create a realistic vision for the centre of the village, drawing on the support of all interested parties to produce a tangible programme of actions to enhance the vitality and viability of the village. Key development sites were identified and sketch briefs prepared and key public space objectives were set out.

Map 3 shows the area within ‘Opportunity Site 3’. It is shown as part of a larger site area combined with the adjoining site to the east. The plan states: “Area No. 3 - This

is the largest landbank and includes those lands to the East of the Mormon Meeting Hall. These lands are in two ownerships which may be combined to facilitate an integrated mixed use development of retail, general business use, restaurants, crèche, underground parking, pedestrian links to Canal and new civic space. The area presents the best development opportunity and is the appropriate location to integrate and consolidate the village core, thereby enhancing and protecting the character of the village.”

5.0 Planning History

5.1. Subject site

VSL History

ABP-306273-19 - Vacant Site Levy - Appeal S.9. Notice Confirmed on the 8 April 2020 because of the condition of the site and the acknowledgement by the owner that the site in question is vacant,

No other planning history on the site.

5.2. Adjacent Lands:

VSL History:

ABP-307525-20 Vacant Site Levy - Appeal S.9. Notice Confirmed on the 19 October 2020 because of the neglected condition of the site in the context of the surrounding area, and the majority of the site being vacant or idle.

Planning History:

F06A/00378/ABP Ref. PL06F.217020: Permission refused by the Board in August 2006 for a mixed use retail and residential development.

F07A/1075 ABP Ref. PL06F.226486: Permission refused by the Board in September 2008 for a mixed use residential and retail development.

FW14A/0144/ABP Ref. PL06F.245446: Permission refused by the Board in January 2016 for a mixed use retail and residential scheme. The reason for refusal stated:

“It is an objective in the current Fingal County Development Plan 2011-2017 to implement the Urban Centre Strategy for Clonsilla. The site of the proposed development forms a significant portion of undeveloped lands within the Urban

Centre Strategy which are identified as Opportunity Area number 3. The Strategy recognises that this area presents the best development opportunity and is the appropriate location to integrate and consolidate the village core thereby enhancing and protecting the character of the village. The proposed development, by reason of lack of integration with adjoining areas would result in a disorderly form of development on this important site within the village and would set a precedent for similar non-integrated development in this centrally located site and would, therefore, fail to comply with the policies and objectives set out in the Urban Centre Strategy for Clonsilla and the current Fingal County Development Plan. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.”

FW19A/0112/ABP 305478-19: Permission refused by the Board in February 2019 for a mixed use retail and residential scheme. The reason for refusal was as follows:

“The site of the proposed development forms part of a key site within the village of Clonsilla for mixed use development, with the land use zoning objective “TC” Town and District Centre. It also forms a significant portion of undeveloped lands within the Clonsilla Urban Centre Strategy 2008 identified as “Opportunity Area number 3”. The Strategy identifies this area for an integrated mixed-use development of retail, general business use, restaurants, crèche, underground parking, pedestrian links to Canal and new civic space, and notes that it presents the best development opportunity and is the appropriate location to integrate and consolidate the village core, thereby enhancing and protecting the character of the village. The proposed development, by reason of its poor design and layout, including distribution and usability of open space, roads layout, dominance of surface car parking, lack of set down area for the proposed crèche, minimal landscaping and lack of permeability with adjoining areas, would result in a substandard, un-coordinated form of development on this central site in the village core. It would seriously injure the residential amenity of future occupants, would set an undesirable precedent for similar non-integrated forms of development in the area, and would, therefore, fail to comply with the policies and objectives set out in the Fingal County Development Plan 2017-2023, the Design Manual for Urban Roads and Streets issued by the Government of Ireland in May 2019, and Clonsilla Urban Centre Strategy 2008. It is

considered that the proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.”

6.0 Planning Authority Decision

6.1. Register of Vacant Sites Report:

6.1.1. A Vacant Site Report (23.09.2019) was prepared for the site outlining the dates 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 Regeneration. The following key points are noted:

- Site visits were undertaken on 05.04.2019 and 23.09.19.
- The site is clearly vacant, idle and void of any active use. It is not being used for the purposes of its zoning.
- No development has commenced on site.
- It is not listed on the Derelict Site Register.
- The site is not part of a person’s home. It is not in community use. It is not being used for any temporary purpose. The site has not been identified for any capital works.

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

- The lands are vacant and idle. It is stated that it has been a vacant site for the duration of the 12 months preceding the report. Supporting evidence of this includes:
 - Site inspection photographs dated 17.04.19 and 30.08.2019.
 - Bluesky Orthos aerial photographic survey on behalf of Fingal County Council dated 27.06.2018.
 - Google Street view images from May 2009, September 2009, April 2017 and April 2019.
 - Planning Authority’s knowledge and familiarity with this site due to the planning history of adjoining lands.

- The site is in a neglected condition. The structure on the site is clearly not habitable and is poorly maintained. The openings in the front elevation of the structure are blocked up. There is damage to the tiled/slanted roof as a consequence of neglect. The structure and site are clearly overgrown with vegetation and in an unkempt condition particularly from the roadside boundary. Access to the site is restricted by unsightly green mesh style fencing and padlocked access gates. The site is clearly vacant and idle.
- There is evidence of antisocial behaviour. Graffiti was present on the galvanised gate.
- There are a number of existing dwellings on Weavers Row that appear to have a similar footprint and building line to the structure on the site. It could be argued as the site is vacant that there is a reduction in one habitable house.
- The report concludes that the site is visually prominent and is a strategically important site. It has adverse effects in terms of visual amenity in an established urban setting and streetscape.

6.1.3. In response to a submission received opposing the proposed entry onto the VSL register, it was noted:

- The submission has not demonstrated that the site is not vacant and has not been vacant, for the duration of the preceding 12 months. In this regard, it is considered the site remains within the criteria of a 'regeneration site'.
- Notwithstanding the planning history of the adjoining Aldi site and the fact that the site appears to be for sale, it is considered that if FCC decides not to enter the site on the register, there remains a risk that the site may not be developed in the foreseeable future. It recommended that the lands should be included on the Vacant Sites Register.

6.1.4. Following a Chief Executive's Order signed on the 24 March 2021; a section 15 Demand Notice issued.

6.2. **Planning Authority Notices:**

6.2.1. Fingal County Council advised the site owner that the subject site (Planning Authority site ref. VS0124) is now liable for a payment of 7% of its valuation and hence the levy for 2020 is €129,500. Payment terms and methods are outlined.

- 6.2.2. A Notice of Determination of Market Value was issued to Anne O'Neill on the 10 January 2020 stating that the valuation placed on the site is €1,850,000 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 the 3 December 2019, advising the owner that their site had been placed on the register.
- 6.2.4. A section 7(1) Notice issued on the 24 September 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

- 7.1.1. The landowner has submitted an appeal to the Board, against the decision of Fingal County Council to retain the subject site on the Register and charge the levy. The grounds of the appeal can be summarised as follows:

- Two other vacant sites in the area have not yet been charged the Levy.
- Approaches have been made to ALDI to purchase the site to no avail, but a plan is being prepared to develop the ALDI site and the subject site for a comprehensive scheme.

The owner also points out that they do not have the means to pay the levy, the site has not been sold despite a wish to be rid of the lands. The owner states that they are not hoarding the land.

7.2. Planning Authority Response

The planning authority have provided a response to the appellant's grounds of appeal that include:

- Adjacent lands to the appeal site have been included in the VSR, reference number VS/0123 refers. Having been placed on the register on the 16 June 2020 this site is not liable for the 2020 levy, the ALDI site was assessed after the subject lands were assessed.

7.3. Further Response

The appellant has provided a response as follows:

- Expresses disappointment that not all sites were assessed together at the same time, and it is unfair that her site should be the only one charged for 2020.
- The site is not being hoarded in order to raise site value. The sale of the site has been actively pursued. The site alone cannot be developed, as it is too small, and this has made it unattractive to purchase.

8.0 **Assessment**

8.1. **Introduction**

8.2. The Board should note that the adjacent site to the east stands on the VSR, reference number ABP-307525-20 (VS/0123) refers.

8.3. 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.

8.4. **The site is no longer vacant**

8.4.1. 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) 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.

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

8.5. **Is it a Vacant Site?**

8.5.1. A Section 7(3) Notice of Entry on the Vacant Sites Register was issued on the 3 December 2019. Subsequently a Section 9 appeal was made to the Board under

appeal reference ABP-306273-19. A detailed assessment as to whether the site constituted a vacant site was carried out by the Reporting Inspector. It was determined by the Board that given the recorded site visits, site photographs, the experience of the planning authority with regards to the area and that the owner acknowledged that the site was vacant, the site could be placed on the register, these matters have not changed and are not directly addressed by the appellant.

- 8.5.2. However, the appellant does state an intention to develop the lands in tandem with the adjacent landowner (ALDI) with the aim of addressing the concerns raised by refused planning applications in the past. It is stated that this work has begun. I am satisfied that no new information has come to the fore since the Section 7(3) Notice was issued and that this matter has already been adjudicated on and should not be re-examined. I do not intend to revisit the decision to place the site on the register, no parties dispute whether the site should have been placed on the register in the first place.

The site is no longer vacant as of the 1st of January 2019

- 8.5.3. The owner has not advanced any use for the site for the year concerned 2020. The matters that arise from the appeal grounds refer to the owner's financial situation and that they are unable to pay the levy. Unfortunately, the 2015 Act does not make allowances for the financial situation that might pertain to an individual. However, this is a matter that the planning authority might address under section 15(5) of the 2015 Act that states:

A planning authority may provide for the payment of vacant site levy by instalments.

- 8.5.4. The owner goes on to state that the site is not saleable because it does not have planning permission and cannot be developed on its own because of its size. A far better strategy would be to combine the site with the lands adjacent and develop the entire area as one. The owner states that advances were made to ALDI, the owner of the adjacent site, but they have showed no interest to purchase. However, recent attempts have been made to progress a development proposal for the entire lands, the owners' lands and ALDI's, but no actual planning application has been lodged with the Council. Even though the owner makes the case that a planning application is being prepared, the 2015 Act does not indicate that administrative activity in

relation to a site, such as preparing or obtaining planning permission, should be considered to deem a site not vacant or idle. Furthermore, an actual planning application has not been lodged with the planning authority and there is no evidence on the file to indicate at what stage such a proposal is at.

- 8.5.5. In terms of the current appearance of the site, I notice that a sturdy plastic mesh has been attached to fencing along the front of the site and the adjacent site to the east. This means that all of these lands cannot be readily viewed from the public demesne. Upon closer investigation, I note that the grounds of the site are overgrown and the single storey building (cottage) on site is in a very dilapidated state. 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 charge to be levied.

8.6. Procedural Matter

- 8.6.1. The owner makes the point that it is unfair to charge the levy on her property when the site next door lies vacant and without a charge. I note that the adjacent site, in the ownership of ALDI, stands on the register and could be liable for a charge in the future. The planning authority note that site VS/0123 (ALDI lands) was assessed at a later date than the appellant's site and so cannot be considered for the levy year 2020. The ALDI lands were placed on the register as of the 16 June 2020, the date on which the section 7(3) Notice was issued. In this respect I note that section 15(3) of the 2015 Act states:

Vacant site levy shall be payable in arrears each year beginning in 2019 by the owner of a vacant site that stands entered on the register on 1 January of that year to the planning authority in whose functional area the vacant site is located

- 8.6.2. This means that the ALDI lands can be considered for a charge on 1 January 2022 for the year 2021, if that site remains vacant. This is a matter for the planning authority to decide at the appropriate time. The owner's site was placed on the register as of the 24 September 2019, and so can be considered for the year 2020.

8.7. Levy Calculation

- 8.7.1. A Notice of Determination of Market Value was issued to Anne O'Neill on the 10 January 2020 stating that the valuation placed on the site is €1,850,000. No

evidence from the appellant has been submitted to show that this valuation was appealed to the Valuation Tribunal.

- 8.7.2. A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to Anne O'Neill on the 23 March 2021 for the value of €129,500.
- 8.7.3. 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

- 9.1. 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 14 April 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.

Stephen Rhys Thomas
Senior Planning Inspector

07 September 2021