



An
Bord
Pleanála

Inspector's Report ABP-310358-21

Type of Appeal	Appeal against a Section 18 Demand for Payment
Location	Site at junction of Appian Way, Dublin 6.
Planning Authority	Dublin City Council South
Planning Authority VSL Reg. Ref.	VS-0797
Site Owner	RGRE J and R Valery's 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 €315,000.00 for vacant site at junction of Appian Way, Dublin 6 and identified as VS-0797. The appeal site has one stated registered owner RGRE J and R Valery's Limited.
- 1.2. A Notice of Proposed Entry on the Vacant Sites Register was issued to RGRE J&R Appian Limited on 14th March 2019. On the 16th April 2019, the Notice of Entry on the Vacant Sites Register was issued to RGRE J&R Appian 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 June 2019. The value of the subject site is stated to be €4,500,000.00. A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to RGRE J&R Appian Limited on the 26th February 2021 for the value of €315,000.00. A section 17 Change of Ownership and Re-Issue of Levy Notice dated 14th April 2021. This approved that RGRE J&R Valery's Limited replace RGRE J&R Appian Limited. This Notice also cancelled the Demand for Vacant Site Levy for 2020 served on RGRE J&R Appian Limited and that this is reissued and served on RGRE J&R Valery's Limited (new owners of the site and an associated company of RGRE J&R Valery's Limited).
- 1.4. A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to RGRE J&R Appian Valery's Limited on the 29th April 2021 for the value of €315,000.00. The appellant (RGRE J and R Appian Valery's 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

The site with a stated area of c. 0.092ha is bounded to by Appian Way and Lesson Street Lower and forms the corner of Appian Way and Lesson Street Lower. It is bounded Lesson Village (residential development) which is access off Lesson Street Lower. On the opposite side along Leeson Street Lower is a series of terraced houses. Adjoining the site Appian Way is Mitchel House and Courtney House (1960s apartment blocks).

The site is c. 1.5km from Dublin City Centre and is easily accessed by foot, bicycle and public transport at Lesson Street Upper.

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) and 5(2) of the Act. A section 7(3) Notice was issued 16th April 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 Dublin City Development Plan 2016-2022.

The site is zoned **Z1** 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.

5.0 Planning History

PA Ref. 3662/21 (ABP 312225-21) refers to a current appeal against a DCC decision to refuse permission in 2021 for a 10 storey apartment block with 44 BTE units and all associated site works for the following reasons:

- 1. Having regard to the excessive height, scale and density on a small visually prominent site, it is considered that the proposed development would constitute overdevelopment of the site given its plot ratio and density, and would have an unreasonable overbearing, visually dominant effect on*

adjoining sites. The proposed development with its unjustifiable height and density fails to integrate or be compatible with the streetscape along both Appian Way and Leeson Street Upper and as a result, would seriously injure the visual amenities of the streetscape and would have an adverse impact on the character of the area and is therefore contrary to Section 16.2.1.1 of the Dublin City Development Plan 2016-2022. The proposed development would, therefore, by itself and by the precedent it would set for other development, seriously injure the amenities of property in the vicinity, would be contrary to the provisions of the Development Plan and would be contrary to the proper planning and sustainable development of the area. 2. The development is located on a heavily trafficked road which is a Quality Bus Corridor and planned Bus Connects route and in an area where there is limited on street car-parking available. The service access proposals are considered inadequate to facilitate the development ,and no drop-off provision within the site is proposed. No car parking provision (accessible, visitor and carshare parking all omitted) within the site is proposed. As a result the development would generate overspill parking, drop-offs and servicing activity onto the adjacent Leeson Street Upper and footpaths thereby causing an obstruction to pedestrians, cyclists, bus services and other road users resulting in traffic safety hazard. The development is considered contrary to the Dublin City Development Plan Section 16.38 and the Design Standards for New Apartments, Section 4.23, and would endanger public safety by reason of traffic hazard. The development would therefore be contrary to the proper

planning and sustainable development of the area, and would set an undesirable precedent for similar developments in the area.

PA Ref. 0324/21 refer to Section 97 Certificate of Exemption for an application for 44 BTR apartments.

309841-21 refers to a section 18 appeal against a Demand for Vacant Site Levy by RGRE J and R Appian Limited lodged on 25th March 2021. (Invalid).

PA Reg. Ref. 2554/16 (ABP PL29S.247070) refers to a 2016 grant of permission for 16 no. residential units in a 5 storey building.

VS-0797 Site is on the Vacant Site Register.

6.0 Planning Authority Decision

6.1 Register of Vacant Sites Report:

6.1.1 A Report (11th April 2018) 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 28th August 2016 and 11th April 2018

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

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

There are no further planner reports on file.

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 vacant or idle.

6.2 Planning Authority Notices:

- 6.2.1 A Copy of Order of Assistant Chief Executive S2105/21 approving change of ownership, cancelling and reserving Demand of Vacant Site Levy for 2020 under section 17 of the Urban Regeneration and Housing Act 2015 (as amended).
- 6.2.2 The file forwarded by DCC contains a RGRE J&R Appian Limited Company printout and Property Registration Authority document regarding change of ownership from RGRE J&R Appian Limited to RGRE J&R Valery's Limited, an associate company.
- 6.2.3 A Notice of Determination of Market Value was issued to RGRE J&R Appian Limited on the 10th June 2019 stating that the valuation placed on the site is €4,500,000.00 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 16th April 2019 advising the owner that their site had been placed on the register.
- 6.2.5 A section 7(1) Notice issued on the 14th March 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 Vacant Sites Register and against the Demand for Payment. The grounds of the appeal can be summarised as follows:

- The appellant does not dispute that the site is vacant. They dispute the liability for the levy as calculated, in circumstances where the appellant was not served with any notices leading up to the levy, until it received the Notice the subject of this appeal.
- The appellant disputes the valuation of €4.500,000.00 is correct.
- The appellant was not served with any Notice of Determination of Value, therefore has not had the opportunity to challenge the valuation placed on the site.

- The appellant was not served with a proposed Notice of Entry nor the Notice of Entry itself.
- The former owner is an associated company of the appellant. However the issues of the steps leading to the determination of value and the application of a levy based on a market value are entirely separate to this.
- The appellant wrote to DCC to address this and DCC issued a new Demand on the 29th April 2021 addressed to the current owner (The appellant).
- It is submitted that the proposed levy of €315,000 has been incorrectly calculated as it is derived from an incorrect valuation, which the appellant was never served in the first place.
- The appellant invites the Board, in its consideration of the calculation of the levy, to correct the market valuation in order that an appropriate levy can be applied.
- The appellant purchased the site on the 2nd October 2018 for €2,455,175. The transfer was registered on the Registry of Deeds on 9th July 2019. A valuation dated 23rd March 2021 states a value in the sum of €3-3.25m. Documents enclosed to inform the Tribunal's calculation of the levy, derived by reference to a correct market valuation, on this appeal

7.2 Planning Authority Response

The planning authority has 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 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.

8.3 Is it a Vacant Site?

8.3.1 A Section 7(3) Notice of Entry on the Vacant Sites Register was issued on the 16th April 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 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 not disputed that the site was vacant nor do they dispute that the site continues to be vacant at the time of appeal.

8.3.3 Based on the information submitted, the evidence presented by the Planning Authority, the statement by the appellant that they do not dispute that the site is vacant. I am satisfied that for the period concerned, 2020, the site remained a vacant site.

8.4 Levy Calculation

8.4.1 Section 17(1) of the Urban Regeneration Act 2015 states that where in any year there is a change in ownership of a vacant site, the amount of vacant site levy to be charged in respect of that site for that year and the proceeding year, shall be zero. Section 17 states that subsection (1) shall not apply where ownership of the site transfers from one company to an associated company.

8.4.2 Furthermore, I note that the transfer was register with the PRA on 9th July 2019, therefore excludes the year 2020 which is the relevant year in this instance and the levy for which is the subject of this appeal before the Board. I am satisfied that any change in ownership that took place in 2019 does not affect the 2020 levy.

8.4.3 The appellant disputes the liability for the levy as calculated, in circumstances where the appellant was not served with any notices leading up to the levy, until it received the Notice the subject of this appeal. The appellant also disputes the valuation of €4.500,000.00 is correct.

8.4.4 Section 12(2) and (3) of the 2015 Act states:

(2) The market value of the vacant site shall be estimated by the planning authority and it shall authorise a person it considers suitably qualified for that purpose to inspect the site and report to it the value thereof and the person having possession or custody of the site shall permit the person so authorised to inspect at such reasonable times as the planning authority considers necessary.

(3) Where a person authorised under subsection (2) is not permitted to inspect a property for the purposes of providing an estimate, he or she shall make an estimate of the market value of the site based on his or her knowledge of the site and property and the prevailing local market conditions.

8.4.5 It is possible that the procedures employed by the planning authority to value the site, could have formed the basis for an appeal to the Valuation Tribunal. The text contained in the notice, the methodology employed to value the site and the market value price assigned to the site are all matters that could have been reasonably assembled in an appeal to the Valuation Tribunal, with or without further correspondence from the planning authority after the section 12 notice was issued.

8.4.6 Though the appellant may feel they have a strong case to make in relation to the market value of the site, the time for that appeal has passed. At the date of the valuation notification (10th June 2019), the appellant should have appealed directly to the Valuation Tribunal within 28 days. This has not happened and the owner did not make appeal to the Tribunal against a determination made by a planning authority. The scope of an appeal to the Valuation Tribunal is set out in detail at section 13 of the 2015 Act and this section of the Act was highlighted to the owner in the text of the section 12 Notice. In any case, unfortunately for the appellant, the Board has no jurisdiction to adjudicate a determination of market value, that is for the Valuation Tribunal to do.

- 8.4.7 A Notice of Determination of Market Value was issued to RGRE J&R Appian Limited on the 10th June 2019 stating that the valuation placed on the site is €4,500,000.00. No evidence from the appellant has been submitted to show that this valuation was appealed to the Valuation Tribunal.
- 8.4.8 A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to RGRE J&R Appian Limited on the 26th February 2021 for the value of € 315,000,.00. This was the was appealed under ABP 309841-21 and deemed invalid.
- 8.4.9 A section 17 Change of Ownership and Re-Issue of Levy Notice dated 14th April 2021 approved that RGRE J&R Valery's Limited replace RGRE J&R Appian Limited. This Notice also cancelled the Demand for Vacant Site Levy for 2020 served on RGRE J&R Appian Limited and that this is reissued and served on RGRE J&R Valery's Limited (new owners of the site and an associated company of RGRE J&R Valery's Limited).
- 8.4.10 A Notice of Demand for Payment of Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to RGRE J&R Appian Valery's Limited on the 29th April 2021 for the value of €315,000.00.
- 8.4.11 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 27th May 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 need for housing in the area, the site is suitable for the provision of housing as demonstrated by the residential land use zoning for the area, and that insufficient reason is put forward to cancel entry on the Vacant Sites Register,
- (e) That the majority of the site is and was vacant/idle for the period concerned,
- (f) The amount of the levy has been correctly calculated at 7% of the site value in 2019,
- (g) There has been no change in the ownership of the site during the period concerned, 2020, the Board is satisfied that the site was a vacant site on the 1st of January 2020 and was a vacant site on 27th May 2021, the date on which the appeal was made and the amount of the levy has been correctly calculated. The demand for payment of the vacant site levy under Section 15 of the Urban Regeneration and Housing Act 2015 is, therefore, confirmed.

Dáire McDevitt

Senior Planning Inspector

5th May 2022