



An  
Bord  
Pleanála

## Inspector's Report ABP-313313-22

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<b>Type of Appeal</b>	Appeal against a Section 18 Demand for Payment.
<b>Location</b>	Aldborough House, Portland Row, Dublin 1.
<b>Planning Authority</b>	Dublin City Council.
<b>Planning Authority VSL Reg. Ref.</b>	VS-0124.
<b>Site Owner</b>	Reliance Investments Ltd.
<b>Planning Authority Decision</b>	Demand for payment of Vacant Site Levy.
<b>Date of Site Visit</b>	10 November 2022.
<b>Inspector</b>	Stephen Rhys Thomas.

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## 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 2021 amounting to €210,000 for vacant site lands at Aldborough House, Portland Row, Dublin 1, and identified as VS-0124. The notice was issued to Reliance Investments Limited and dated 15 March 2022. Reliance Investments Limited has appealed the Demand for Payment Notice issued pursuant to Section 15 of the Urban Regeneration and Housing Act.
- 1.2. A valuation pertaining to the site was issued by Dublin City Council on the 31 May 2018. The value of the subject site is stated to be €3,000,000.
- 1.3. A Notice of Proposed Entry on the Vacant Sites Register was issued on the 19 June 2017. On the 28 July 2017, the Notice of Entry on the Vacant Sites Register was issued to the owner. This section 7(3) notice was not appealed to the Board.

## 2.0 Site Location and Description

- 2.1. The site is located in the north east inner city of Dublin. It consists of the curtilage of Aldborough House, a protected structure. The main structure on site has three storeys over basement. The front elevation is classical in form and finished in stone and in very good repair. The side and rear elevations are brick, with bows on the south side and the back of the house, and windows that are broken. Curved, single storey wings emerge from either side of the front of the house. A guardhouse stands in front of the house beside the gate from Portland Row. The attendant grounds have been tarmacked. The site also has street frontage onto Killarney Street and Empress Place, with most of the boundary marked by a high stone wall. The site lies beside Five Lamps, a prominent junction on the main approach to the city from the north-east. The back of the site abuts the curtilage of Killarney Court, a block of flats that was built in the 1940s on the former gardens of Aldborough House. Two-storey terraced houses from the 19th century stand on the other side of Killarney Street and Portland Row, with contemporary 3-storey houses on the other side of Empress Place.

### 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 28 July 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 Policy

4.1. The **Dublin City Development Plan 2016-2022** is the operative development plan. The site is located on lands that are subject to zoning objective Z5 – City Centre – ‘To consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity.’. The building is a Protected Structure ref number 6844.

4.2. One of the key strategies of the Development Plan, as set out in section 4.4 is the creation of a consolidated city, whereby infill sites are sustainably developed and new urban environments are created, by actively promoting active land management, a key component of which is the vacant site levy.

4.3. Section 2.2.8.4 of the plan states that in accordance with the Urban Regeneration and Housing Act 2015, it is a key pillar of the development plan to promote the development and renewal of areas, identified having regard to the core strategy, that are in need of regeneration, in order to prevent: (i) adverse effects on existing

amenities in such areas, in particular as a result of the ruinous or neglected condition of any land, (ii) urban blight and decay, (iii) anti-social behaviour or (iv) a shortage of habitable houses or of land suitable for residential use or a mixture of residential and other uses.

- 4.4. Section 14.9 of the Development Plan 2016-2022 states that the VSL will apply to lands zoned Z1, Z2, Z3, Z4, Z5, Z6, Z7, Z8, Z10, Z12 and Z14.
- 4.5. 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.
- 4.6. Policy QH3 states that it is policy of the Council (i) To secure the implementation of the Dublin City Council Housing Strategy` in accordance with the provision of national legislation. In this regard, 10% of the land zoned for residential uses, or for a mixture of residential and other uses, shall be reserved for the provision of social and/or affordable housing in order to promote tenure diversity and a socially inclusive city. (ii) To engage in active land management including the implementation of the vacant levy on all vacant residential and regeneration lands as set out in the Urban Regeneration and Housing Act 2015.
- 4.7. **Dublin City Development Plan 2022-2028** - the Elected Members will make the Dublin City Development Plan 2022-2028 with or without amendment, at the end of

October 2022, this date has not been confirmed. Irrespective, the demand notification to the owner was issued during the 2022 Development Plan and all issues that relate to the appeal are only relevant to the operative plan at the time.

## 5.0 Planning History

### 5.1.1. Subject Site:

PA ref **3457/17** and ABP ref **PL29N.249379**. Permission to demolish ancillary structure, taking down, removal and storage of guard house. Conserve and restore three storey over lower ground floor office building. Two new office wings. May 2018.

## 6.0 Planning Authority Decision

### 6.1. Register of Vacant Sites Report:

First report (20/11/2020) – Site inspection took place on the 11 July 2018, update report date 11 August 2017\*. The site comprises a protected structure in disrepair and vacant for past 12 months. Vegetation is overgrown and large amounts of litter on site. An update reports a skip on site. Site should be included on the register. Photographs dated 11/07/18 and google maps images 2016 and aerial photograph 2013.

\* Dates as stated in the planning authority reports.

### 6.2. Planning Authority Notice

- 6.2.1. A Notice of Proposed Entry on the Vacant Sites Register was issued to Reliance Investments Limited the 19 June 2017.
- 6.2.2. On the 28 July 2017, the Notice of Entry on the Vacant Sites Register under section 5(1)(b) was issued to Reliance Investments Limited, no appeal was made to the Board in relation to this notice.
- 6.2.3. A valuation pertaining to the site was issued by Dublin City Council on the 31 May 2018. The value of the subject site is stated to be €3,000,000.
- 6.2.4. A Notice of Demand for Payment of Vacant Site Levy for 2021 under Section 15 of the Urban Regeneration and Housing Act was issued to Reliance Investments Limited on the 15 March 2022 for the value of €210,000.

## **7.0 The Appeal**

### **7.1. Grounds of Appeal**

7.1.1. The appellant 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 number of remedial works have been carried out to the house and have been the subject of section 5 declaration (reference number 0268/21) and consultation with the Council Conservation Officer. Works included: repairs to stonework, replacement of iron cramps to walls and repairs to windows.
- No dates have been given for recent site visits and the condition of the building is now very different from before. The nature and extent of works to the house mean that the site no longer adversely impacts the character of the area, doesn't affect antisocial behaviour or underinvestment in the area.

### **7.2. Planning Authority Response**

7.2.1. The owner has carried out extensive repair works to the main façade of the house (a protected structure), but these are considered essential to prevent further deterioration of the building. The works are not considered development of the site and are unrelated to the permission granted.

7.2.2. Aldborough house is still vacant and maintains a dilapidated appearance. There is evidence of graffiti, a sign of antisocial behaviour. The current condition of the site detracts from the character of the area. The site still meets the requirements set out in section 6(6) of the 2015 Act.

### **7.3. Further Response**

7.3.1. The appellant reiterates the reasons why the site should no longer be on the register. The building cannot be occupied until works have been completed. In addition, it is stated that the existence of graffiti is addressed by removal on a regular basis. The area in which the site is located has a high incidence of crime. It would be counterproductive to levy a charge and further limit investment in the building.

## 8.0 Assessment

### 8.1. Introduction

8.1.1. This current appeal 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)(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, the site is no longer a vacant site as of the 1<sup>st</sup> of January in the year concerned, in this case 2021.

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 28 July 2017. No Section 9 appeal was made to the Board. The owner did make a submission in response to the section 7(1) notice, the submission refers to steps taken to make the building safe and limit antisocial behaviour. The owner sets out that a planning application will be lodged soon but that the building is vacant nonetheless. The planning authority noted the contents of the owner's submission and placed the site on the register.

8.3.2. The site was initially placed on the register in July 2017 and the majority of the site was considered vacant for the period of twelve months prior to that date. I note the submission made by the owner during the registration process and dated July 2017 makes no reference to any active use and in fact states that the site has been lying vacant for some time. The planning authority took into account the submission to the section 7(1) notice and proceeded to place the site on the register on that basis. The



assessments provided by the planning authority provide the basis for the decision to place the site on the register and I find them to comply with the requirements of the 2015 Act in relation to regeneration land. The owner elected not to appeal this decision of the planning authority, but did make a submission that aspired to the development of the site in the future. I am satisfied that the site was correctly assessed as being vacant or idle, a fact declared by the owner in their submission on foot of the section 7(1) notice. The site has stood on the register since 2017 and now after a demand from the planning authority, the owner has set forth the reasons why its removal can be considered, and the no charge levied.

#### **8.4. The site is no longer vacant as of the 1<sup>st</sup> of January 2021**

8.4.1. The appellant has set out the reasons why the site should no longer be listed on the register of vacant sites. According to the appellant, after extensive repair works the building no longer meets the requirements of section 6(6) of the 2015 Act, the structure is not neglected, anti-social behaviour is not taking place and investment in the area hasn't been limited. The planning authority note the works carried out but only see them as maintenance works not development, the building is vacant, in poor condition and anti-social behaviour still takes place on the site.

8.4.2. From the documentation on file there is no disagreement between parties that the site is idle, has no use and is unoccupied, section 5(1)(b)(i) is therefore met. In terms of regeneration land, the 2015 Act requires that other factors are met in terms of adverse affects on public amenities and the character of the area, and these include:

Section 6(6) as follows:

*(a) land or structures in the area were, or are, in a ruinous or neglected condition,*

*(b) anti-social behaviour was or is taking place in the area, or*

*(c) there has been a reduction in the number of habitable houses, or the number of people living, in the area,*

8.4.3. The appellant appears to make the point that works carried to maintain the building should be considered as a use for the site. However, like the planning authority I disagree and the routine maintenance and upkeep of a property falls under the duty and care of any property owner and does not constitute development in this

instance. I am satisfied that the site is vacant or idle. So, if it is agreed that the site is vacant, which I agree that it was and continues to be, then it must be established if the matters above were affected by the existence of such vacant or idle land, and if this resulted in adverse effects on public infrastructure or character of the area. The planning authority agree that these factors have been met and retained the site on the register and charged the levy.

- 8.4.4. (a) land or structures in the area were, or are, in a ruinous or neglected condition – From my observations of the site, I can see that the front façade of the main building on site is in very good condition. However, the remainder of the site, including the sides and rear of the main house are in poor condition with broken windows and other signs of neglect. Though not ruinous, the buildings on site do show signs of neglect and photographs supplied by the planning authority for May 2022 and before demonstrate this. The question arises whether or not the site being vacant or idle has adverse effects on either public amenities or the character of the area with reference to its neglected condition. The site stands out from other property in the vicinity because of its neglected condition and this has been the case for some time despite the best efforts of the owner. I accept that the conservation and bringing into use of such a building has its difficulties, but it does not escape the fact that in my view and that of the planning authority, it affects the area around. For this reason, I find that the neglected condition of the site has adverse affects on the amenities and character of the area, criteria 6(6)(a) is met.
- 8.4.5. (b) anti-social behaviour was or is taking place in the area – The planning authority have noted that the site exhibits signs of graffiti and litter was present on the site in large quantities in the past. The litter has been dealt with and a regime of removing graffiti has been implemented by the owner. The appellant points out that the site is in a deprived part of the city where crime and antisocial behaviour is more commonplace than elsewhere, the site does not add to this state of affairs. According to the owner the site had been the focus of arson attacks in the past but surveillance and monitoring has addressed this. On the wider issue of this part of the city and antisocial behaviour in general, the neglected condition of the building certainly doesn't help matters. Well maintained, occupied and in use property can repel the worst effects of antisocial behaviour despite the world around them. However, in this instance I find that the site's vacant an idle condition does not help

matters and when combined with its neglected appearance results in an adverse effect on the character of the area, criteria 6(6)(b) is met.

8.4.6. (c) there has been a reduction in the number of habitable houses, or the number of people living, in the area – there is no information on the file to suggest whether this is the case or not. I observed new and old residential development in the vicinity as well as new homes currently under construction. It is unlikely that the existence of the vacant site has reduced the number of habitable houses in the area, criteria 6(6)(c) is not met.

8.4.7. Because the Act includes commas and an 'or' between (a), (b) or (c), only one criteria is required to be met. In conclusion, I consider that two of the tests in Section 6(6) are met and that the site has adverse effects on the character of the area and that antisocial behaviour was or is taking place, so thus the lands can be categorised as a vacant site as defined by Section 5(1)(b)(ii). In addition, I am satisfied that the neglected condition of these vacant lands has an adverse effect on existing amenities and reduces the amenity provided by existing public infrastructure and facilities (within the meaning of Section 48 of the Act 2000) in the area in which the site is situated, particularly due to the strategic location of the lands in the centre of Dublin City and its proximity to physical and social infrastructure. The site should remain on the register until these circumstances change and the charge levied accordingly.

## 8.5. Levy Calculation

8.5.1. A Notice of Determination of Market Value was issued to Reliance Investments Limited on the 31 May 2018 stating that the valuation placed on the site is €3,000,000. No evidence from the appellant has been submitted to show that this valuation was appealed to the Valuation Tribunal.

8.5.2. A Notice of Demand for Payment of Vacant Site Levy for 2021 under Section 15 of the Urban Regeneration and Housing Act was issued to Reliance Investments Limited on the 15 March 2022 for the value of €210,000.

8.5.3. 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. The site should remain on the register and the charge confirmed.

## 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<sup>st</sup> of January 2021 and was a vacant site on 11<sup>th</sup> April 2022, 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<sup>st</sup> January 2021, 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.

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Stephen Rhys Thomas  
Senior Planning Inspector

25 November 2022