



An
Bord
Pleanála

Inspector's Report ABP-313542-22

Type of Appeal	Appeal against a Section 18 Demand for Payment.
Location	Site to the rear of Unit 14, Block 2, Tolka Valley Industrial Estate, Ballyboggan Road, Dublin 11.
Planning Authority	Dublin City Council.
Planning Authority VSL Reg. Ref.	VS 0457.
Site Owner	Bartra Property (Broombridge) Limited.
Planning Authority Decision	Demand for payment of Vacant Site Levy.
Date of Site Visit	21 December 2022.
Inspector	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 €63,700 for vacant site lands to the rear of Unit 14, Block 2, Tolka Valley Industrial Estate, Ballyboggan Road, Dublin 11, and identified as VS-0457. The notice was issued to Bartra Property (Broombridge) Limited and dated 4 May 2022. Bartra Property (Broombridge) 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 €910,000. This was revised upwards to €1,300,000 and notified on the 14 April 2022.
- 1.3. A Notice of Proposed Entry on the Vacant Sites Register was issued on the 13 October 2017. On the 28 November 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 subject site is located to the rear of Tolka Valley Industrial Estate, c. 70 metres to the south of the Ballyboggan Road and is positioned to the north of the Royal Canal and to the east of Tolka Business Park. Tolka Valley Park is located further north of Ballyboggan Road. The subject site is predominately regular in shape and has a generally flat topography. No obvious buildings are present on the site, a number of shipping containers are located in the northern portion of the site..
- 2.2. The site lies off an access road that also serves several commercial premises to the east including The Porterhouse Brewing Company, a Gym and a Taxi Company. A place of worship is located to the west of the subject site. The Royal Canal and associated Greenway forms the southern boundary of the subject 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 28 November 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 Z6 – To provide for the creation and protection of enterprise and facilitate opportunities for employment creation.

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 Dublin City Development Plan 2022-2028 was adopted at a Special Council meeting on the 2 November 2022. The plan came into effect on the 14 December 2022.
- 4.8. **Residential Zoned Land Tax** - Draft RZLT maps were published by local authorities on the 1 November 2022. Submissions could be made by the public on the Dublin City Council RZLT draft map up to the 1 January 2023.

5.0 Planning History

5.1.1. Subject Site:

PA ref. **3166/22** and ABP ref PL29N.**313376**. Demolition of the existing derelict warehouse structure and ancillary outbuildings and the construction of a mixed use development on a Vacant Site (Vacant Site Register Ref. VS-0457). No decision.

ABP ref TA29N.**310609** – SHD application for 142 apartments refused October 2021.

PA ref. **6356/06**: Permission granted for the construction of a light industrial unit (10.275m high) totalling 1,560sq.m, together with associated site development works.

6.0 Planning Authority Decision

6.1. Register of Vacant Sites Report:

First report (site visit 09/11/2016) – Site inspection took place on the 9 November 2016. The site comprises a warehouse building in disrepair and there are signs of neglect and antisocial behaviour. Aerial photograph dated 2013 and google maps image 2016.

6.2. Planning Authority Notices

- 6.2.1. A Notice of Proposed Entry on the Vacant Sites Register was issued to Protim Abrasives Limited on the 13 October 2017.
- 6.2.2. On the 28 November 2017, the Notice of Entry on the Vacant Sites Register under section 5(1)(b) was issued to Protim Abrasives Limited, no appeal was made to the Board in relation to this notice.
- 6.2.3. On the 31 May 2018, a Notice advising the owner that a levy would be charged was issued to Protim Abrasives Limited, no appeal was made to the Board in relation to this notice.
- 6.2.4. 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 €910,000.

- 6.2.5. A Notice of Demand for Payment of Vacant Site Levy for 2018 under Section 15 of the Urban Regeneration and Housing Act was issued to Protim Abrasives Limited on the 12 February 2019 for the value of €27,300.
- 6.2.6. A Notice of Demand for Payment of Vacant Site Levy for 2019 under Section 15 of the Urban Regeneration and Housing Act was issued to Trebar Enterprises Limited on the 26 February 2020 for the value of €63,700.
- 6.2.7. A valuation pertaining to the site was issued by Dublin City Council on the 14 April 2022. The value of the subject site is stated to be €1,300,000.
- 6.2.8. 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 Bartra Property (Broombridge) Limited on the 4 May 2022 for the value of €63,700.

The subject appeal refers to the most recent notice.

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:
- The site is not a vacant site under the terms of residential land. The site was refused permission under ABP-310609-21 for residential development because the Z6 zoning does not support such development until a review of the Z6 zoning is concluded. In addition, pa ref 3166/22 was refused by the planning authority for similar reasons. It is clear that the site is not suitable for housing: it is not zoned for residential, goes against the core strategy of the development plan, the site is in use for employment purposes. The Navratil case is cited to illustrate that land use zoning and the fact of future issues to be resolved cannot be taken in to account.
 - As regeneration land, the site does not adversely affect the character of the area. The area is characterised as a low intensity industrial and warehousing use, the site is secure and no antisocial behaviour takes place.

- The chargeable year is incorrect, and the date of which the appeal is made is relevant, 9 May 2022, the above issues are therefore relevant
- The current appeal does not prejudice the owner's view that the site may indeed be suitable for housing.

7.2. Planning Authority Response

- 7.2.1. The subject site was assessed against and met the tests for regeneration land, section 5(1)(b) of the 2015 Act, not residential lands as maintained by the appellant. The site remains in a neglected and dilapidated condition and antisocial behaviour was or is taking place, criteria outlined by section 6(6)(a) and (b) are thus fulfilled.

7.3. Further Response

- 7.3.1. The appellant raised issues and responds to the case if the site was either residential or regeneration lands and reiterates the reasons why the site should no longer be on the register.
- 7.3.2. The planning authority have not fully applied the entirety of section 6(6) of the 2015 Act. The appellant disagrees entirely with the planning authority's view of the site as adversely affecting the character of the area, it does not. The growth of vegetation and any dumping (this is denied) are not factors that would adversely affect the character of this particular area. The site is secure and monitored, antisocial behaviour does not take place.
- 7.3.3. The burden of a levy would further hinder the owner's ability to bring the site into use as striven for in the Act.

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 that 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 1st of January in the year concerned, in this case 2021 or at the time of appeal lodgement of the 10 May 2022.

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 November 2017. No Section 9 appeal was made to the Board. I note that ownership of the site has changed over the years and that various demands for levy payment have been set at zero in accordance with section 17 of the 2015 Act. However, some payment demands are still live and these are being pursued by the planning authority of different owners, quite apart from the appeal to hand. I have not concerned myself whatsoever with demands for earlier years, I have considered all matters that are relevant to the demand for 2021 and the subject of this appeal.

8.3.2. The site was initially placed on the register in November 2017 and the majority of the site was considered vacant for the period of twelve months prior to that date. In addition, a section 11(1) notice issued in May 2018 and no appeal was lodged in this case either. 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. I am satisfied that the site was correctly assessed as being vacant or idle. The site has stood on the register since 2017 and now after a demand from the planning authority, a new owner has set forth the reasons why its removal can be considered, and no charge levied.

8.3.3. The appellant has advanced a number of reasons why the site cannot be considered a vacant site under the requirements set down for residential land, section 5(1)(a) of the 2015. Factors included are that the site is not zoned for residential purposes and that a number of planning applications for residential development were refused by the planning authority and Board. A legal case is cited by the appellant to illustrate that land use zoning and the fact of future issues to be resolved cannot be taken in to account. The planning authority generally agree with these points and highlight that the site has been entered onto the register as regeneration land not residential lands and different criteria apply.

8.3.4. To be clear, the lands in question have been identified as regeneration lands for the purpose of the Vacant Site Levy, section 14.9(2) of the City Development Plan, planning reports and all notices refer. The criteria set out in the 2015 Act for residential and regeneration land are different and require different analysis. Sections 5(1)(a), 6(4) and 6(5) relate to residential land and sections 5(1)(b) and 6(6) relate to regeneration as follows:

in the case of a site consisting of regeneration land—

(i) the site, or the majority of the site, is vacant or idle, and

(ii) the site being vacant or idle has adverse effects on existing amenities or reduces the amenity provided by existing public infrastructure and facilities (within the meaning of section 48 of the Act of 2000) in the area in which the site is situated or has adverse affects on the character of the area.

And

A planning authority, or the Board on appeal, shall determine whether or not the site being vacant or idle has adverse effects on existing amenities or reduces

the amenity provided by existing public infrastructure and facilities (within the meaning of section 48 of the Act of 2000) in the area in which the site is situated or has adverse affects on the character of the area for the purposes of this Part by reference to whether—

(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,

8.3.5. The appellant acknowledges this difference and goes on to set out grounds of appeal that the site should not be included as regeneration lands either, as none of the criteria are met by the site in this instance. The planning authority disagree and state that for some time, the site has been vacant, and that the condition of the site is neglected and that there are signs that antisocial behaviour have and do occur. No commentary is provided by either the planning authority or appellant on the matter of any reduction in housing in the area because of the site status. However, as an 'or' rather than an 'and' is placed between (b) and (c) in section 6(6), not all criteria must be met.

8.3.6. I am satisfied that the site can be assessed as a regeneration site, section 5(1)(b) and 6(6) therefore apply. The site is located in an area characterised by large industrial/commercial buildings set behind high fences and served from access lanes off the Ballyboggan Road. The area as a whole has been in industrial or commercial use for some time and consequently most buildings are of a certain age where greater care and maintenance is required. The character of the area is thus defined by older building stock in varying states of repair but none are ruinous or in a significantly neglected condition. The subject site stands apart from other sites in the vicinity and according to the reports of the planning authority, it has been thus for some time. Whilst other sites have operated in varying states of intensity, it is clear that the subject site has not been in use for some time. Moreover, the condition of the site shows signs of neglect, being overgrown and hence difficult to discern any buildings on site other than shipping containers in its northern portion. The has been

secured by hoarding along the Royal Canal boundary, entry from this direction is difficult, however, entry to the site from the western boundary is readily available. There is graffiti present and so it is probably that antisocial behaviour has and does occur on site and/or in the vicinity. The character of the area, despite being industrial/commercial and of older building stock, is adversely affected by the existence of the subject site.

- 8.3.7. I am satisfied that this site has been placed on the register according to the requirements of the 2015 Act and is a vacant site in accordance with section 5(1)(b), I see no reason to consider its removal now based upon any of the arguments advanced by the appellant.

8.4. The site is no longer vacant as of the 1st of January 2021

- 8.4.1. The appellant has not advanced an actual use for the site and it is clear from the reports of the planning authority that the site has lain idle for some time. I note that the appellant has cited a relevant legal case that discussed how the meaning of 'vacant' and 'idle' should be approached. In this regard I am satisfied that the term 'idle' can be rightly applied to the site as it is clear that as of the year beginning 2021 and May 2022 no actual use has been conducted on site. I disagree with the appellant and their statement that their only obligation to the lands in question is to make them secure, monitored, and keep them neat and tidy. These activities are not a use for the site, 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. Whilst the appellant makes the point that the application of the levy would constrain its development, I make reference to circular PL 7/2016 that the levy is designed to incentivise the development of vacant or idle sites in urban areas with a view to bringing such sites into beneficial use. The appellant has not outlined any activity on the site that would support the aim and spirit of the 2015 Act.
- 8.4.2. The appellant has mentioned unsuccessful mixed use and residential planning applications for the site and that the accounts of site inspections carried out therein, should be taken in to consideration. The observations and comments expressed in these previous applications are of interest, however in my mind they further reinforce the longstanding condition of the site and its lack of use over the years and in my view do not serve the appellant's cause very well.

- 8.4.3. I am satisfied that the site is idle, now it must be established if the matters outlined in section 6(6)(a), (b) or (c) 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 there are limited buildings on site and that parts of the site interior are heavily overgrown. The site as a whole shows signs of neglect and photographs supplied by the planning authority 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. The industrial and commercial character of the area accepted, in my view and that of the planning authority, the idle nature and neglected condition of the site affects the character of 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 dumping occurs on the site in large quantities in the past. The appellant disputes the issue of dumping and claims that no antisocial behaviour has taken place in the past or at present thanks to the secure nature of the site and regular security monitoring that takes place since they took ownership in 2021. The lands are a backland site located along the Royal Canal and within an industrial estate. The site is large and provides opportunities for antisocial behaviour, there are extensive areas of graffiti exhibited on the hoardings erected by the owner. At times it can be difficult to identify if a site experiences antisocial behaviour without documentary evidence, such as Garda reports and so on. The owner claims the site is secure and free from antisocial behaviour, the planning authority disagree and these observations are noted. Given the location of the site, in all probability antisocial behaviour has and continues to occur on and in the vicinity of the site. However, as the appellant has gone to great lengths to claim none takes place, I am satisfied that their duty of care extends to limiting such activity on their site, section 6(6)(b) is not 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 a large amount of new residential development currently under construction in the area. 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 2015 Act includes commas and an ‘or’ between (a), (b) or (c), only one criteria is required to be met. In conclusion, I consider that one of the tests in Section 6(6) has been met and that the site has adverse effects on the character of the area, 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 site 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 and the amenity offered by the Royal Canal. 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 on the 31 May 2018 stating that the valuation placed on the site is €910,000. 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 Bartra Property (Broombridge) Limited on the 4 May 2022 for the value of €63,700.

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.

8.5.4. The appellant has questioned the period for which the levy has been demanded and points out that the following year should be claimed for, after the date the demand was made, in this case 2022. I have already established that nothing has been done

by the appellant that would change matters for the site, it was and is idle and its previous and present condition is neglected. The planning authority have approached the service of notices on a chronological basis and in accordance with section 24 of the 2015 Act, and the levy for 2021 now falls due, meaning being payable in arrears each year. The appellant is correct when they highlight that the timing of when the appeal has been lodged should be taken into account and I have done this. There is very little or no difference between the site at the beginning of 2021 and the date upon which the appeal was made, May 2022. I am satisfied that the correct year has been levied by the planning authority, in this instance 2021. There are outstanding demand levies yet to be paid by previous owners and I understand that the planning authority are pursuing same under section 15(4) of the 2015 Act.

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 1st of January 2021 and was a vacant site on 10th May 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 1st 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.

Stephen Rhys Thomas
Senior Planning Inspector

13 January 2023