



An  
Bord  
Pleanála

## Inspector's Report ABP-315628-23

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<b>Type of Appeal</b>	Appeal against a Section 18 Demand for Payment
<b>Location</b>	Site at junction of Appian Way, Dublin 6.
<b>Planning Authority</b>	Dublin City Council South
<b>Planning Authority VSL Reg. Ref.</b>	VS-0797
<b>Site Owner</b>	RGRE J and R Valerys Limited.
<b>Date of Site Visit</b>	3 <sup>rd</sup> September 2023
<b>Inspector</b>	Daire McDevitt

## 1.0 Introduction

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 €4,500,000.00 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.

A Notice of Proposed Entry on the Vacant Sites Register was issued to RGRE J&R Appian Limited on 14<sup>th</sup> March 2019. On the 16<sup>th</sup> 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.

A valuation pertaining to the site was issued by Dublin City Council on 10<sup>th</sup> 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 26<sup>th</sup> February 2021 for the value of €315,000.00. A section 17 Change of Ownership and Re-Issue of Levy Notice dated 14<sup>th</sup> 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).

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 29<sup>th</sup> April 2021 for the value of €315,000.00. The appellant (RGRE J and R Appian Valery's Limited) appealed the Demand for Payment Notice issued pursuant to Section 15 of the Urban Regeneration and Housing Act under ABP Ref.310358-21 which the Board confirmed.

A Notice of Demand for Payment of Vacant Site Levy for the year 2021 under Section 15 of the Urban Regeneration and Housing Act was issued to RGRE J&R Appian Valery's Limited on the 20<sup>th</sup> December 2022 for the value of €315,000.00. The appellant (RGRE J and R Appian Valery's Limited) appealed the Demand for Payment Notice issued pursuant to Section 15 of the Urban Regeneration and Housing Act under which forms the current appeal before the Board.

## 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 16<sup>th</sup> 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 2022-2028.

The site is zoned **Z1 Sustainable Residential Neighbourhood** with a stated objective 'to protect, provide and improve residential amenities'

**Section 14.8 refers to Vacant Site Levy.** This sets out that the VSL will apply to lands zoned **Z1, Z2, Z8, Z10, Z12** & residential lands in the city's SDRAs (Z14) for the purposes of residential and **Z3, Z4, Z5, Z6, and Z7** for regeneration.

**Objectives of note include inter alia:**

- **CSO8 Promote Active line Management.**
- **CSO9 Vacant Sites.**

## **5.0 Planning History**

**PA Ref. VS-0797 (ABP Ref. 310358-21)** refers to an appeal by RGRE J and R Valery's Limited against as section 18 Demand For Payment. The Board determined that the site was a vacant site within the meaning of the act, and the amount of the levy has been correctly calculated in respect of the vacant site. The Board considered it appropriate that a notice be issued to the planning authority who shall confirm the demand for payment.

**PA Ref. 3662/21 (ABP 312225-21)** refers to a 2023 decision to refuse permission for a 10 storey apartment block with 44 BTE units and all associated site works for the reasons relating to 1) height/scale/density on a restricted visually prominent site would constitute overdevelopment of the site and have an unreasonable overbearing and visually dominant effect on adjoining site. Failure to integrate or be compatible with streetscape and public realm. Contrary to Policy SC17 and section 15.5 of the Dublin City Developemtn Plan 2022-2028. 2) development would generate excessive drop offs/servicing and overspill parking adjacent to Leeson street Upper and Appian

Way throughfares and footpaths within the Mitchell House development causing obstruction. Contrary to section 15.5 and 15.10 of the Development Plan.

**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 25<sup>th</sup> 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:**

A Report (11<sup>th</sup> 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 28<sup>th</sup> August 2016 and 11<sup>th</sup> 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.

Report (not dated) refers to site Inspection 21<sup>st</sup> June 2022 and 14<sup>th</sup> December 2022. Photographs included. The site is described as vacant. Secured with hoarding and no sign of activity.

**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:**

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).

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.

A Notice of Determination of Market Value was issued to RGRE J&R Appian Limited on the 10<sup>th</sup> 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.

A section 7(3) Notice issued on 16<sup>th</sup> April 2019 advising the owner that their site had been placed on the register.

A section 7(1) Notice issued on the 14<sup>th</sup> March 2019, advising the owner that their site had been identified as a vacant site and invited submissions, accompanied by a site map.

A Section 15 Demand for Payment Notice issued on the 29<sup>th</sup> April 2021 advising the owner that of the amount of €315,000.00 was due for the year 2020.

A Section 15 Demand for Payment Notice of 2021 Vacant Site Levy issued on the 20<sup>th</sup> December 2022 advising the owner that of the amount of €315,000.00 was due for the year 2021.

Correspondence dated 20<sup>th</sup> December 2022 advises the appellants that the Levy for 2021 is due and the Levy for 2020 still stands.

## **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. In this regard the appellant already appealed a Notice of Demand for Payment of a Vacant Site Levy dated 29<sup>th</sup> April 2021.
- The appellant is appealing the Notice of Demand for Payment of a Vacant Site Levy dated 20<sup>th</sup> December 2022 for the same reasons as the previous appeal.
- 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 29<sup>th</sup> 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 2<sup>nd</sup> October 2018 for €2,455,175. The transfer was registered on the Registry of Deeds on 9<sup>th</sup> July 2019. A valuation dated 23<sup>rd</sup> March 2021 states a value in the sum of €3-3.25m. Documents enclosed to more fully inform the Tribunal's calculation of the levy, derived by reference to a correct market valuation, on this appeal.

## 7.2 Planning Authority Response

Response dated 16<sup>th</sup> March are summarised as follows:

- Notes that the appeal is lodged by RGRE J & R Valerys Limited (the current owners of the site and an associated company of RGRE J & R Appian Limited).
- In accordance with section 12(1) of the Act, the market value of the site was determined by DCC Valuers Office on 1<sup>st</sup> May 2019. The Vacant Site Register was updated and on the 10<sup>th</sup> June 2019 a Notice of Determination of Market value for the amount of €4,500.00.00 issued to the then owner(s) of the site RGRE J & R Appian Limited. The section 12(4) Notice informed RGRE J & R Appian Limited of the right to appeal the Market Value of the site to the Valuation Tribunal within 28 days of said notice. According to the file this was not appealed.
- The section 15 Notice (Demand for Payment of 2021 Vacant Site Levy) dated 20<sup>th</sup> December 2022 is based on 7% of €4.5 million euro, the market value of the site as determined by DCC Valuer's Office on 1<sup>st</sup> May 2019 and notified to RGRE J & R Appian Limited. There is no legal obligation for a planning authority to re-issue a section 12(4) Notice to a new owner of a vacant site following the sale of a vacant site, therefore the notice fully complied with the criteria set out in the Act.
- The Section 15 Demand for payment of 2020 Vacant Site Levy issued to RGRE J & R Valerys Limited was also based on 7% of €4.5 million euro. The Board determined that the amount of levy had been correctly calculated in respect of the vacant site by Board Order dated 5<sup>th</sup> December 2022 relating to ABP 310358-21.

## **8.0 Assessment**

### **8.1 Introduction**

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.

I draw the Boards attention to the Planning History associated with this site and ABP 310358-21 appeal against a section 18 Demand for Payment. The grounds of appeal for the current appeal broadly in line with those submitted under the previous appeal against the levy due for the year 2020.

## **8.2 The site is no longer vacant**

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 2021.

## **8.3 Is it a Vacant Site?**

A Section 7(3) Notice of Entry on the Vacant Sites Register was issued on the 16<sup>th</sup> 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.

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.

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, 2021, the site remained a vacant site.

## **8.4 Levy Calculation**

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.

Furthermore, I note that the transfer was register with the PRA on 9<sup>th</sup> July 2019, therefore excludes the year 2021 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 2021 levy.

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.

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.*

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.

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 (10<sup>th</sup> 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.

A Notice of Determination of Market Value was issued to RGRE J&R Appian Limited on the 10<sup>th</sup> 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.

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 26<sup>th</sup> February 2021 for the value of € 315,000,.00. This was the was appealed under ABP 309841-21 and deemed invalid.

A section 17 Change of Ownership and Re-Issue of Levy Notice dated 14<sup>th</sup> 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).

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 29<sup>th</sup> April 2021 for the value of €315,000.00. This was the was appealed under ABP 310358-21 and the Board confirmed the Notice.

A Notice of Demand for Payment of 2021 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 20<sup>th</sup> December 2022 for the value of €315,000.00.

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 2021 and was a vacant site on 20<sup>th</sup> January 2023, 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, 2021, the Board is satisfied that the site was a vacant site on the 1<sup>st</sup> of January 2021 and was a vacant site on 20<sup>th</sup> January 2023, 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.

*I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.*

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Dáire McDevitt

Senior Planning Inspector

3rd September 2023