



An
Bord
Pleanála

Inspector's Report ABP-318394-23

Type of Appeal	Appeal against a Section 18 Demand for payment of Vacant Site Levy for 2022.
Location	Site adjacent to the Tunnel Control Building, East Wall Road, Dublin 3.
Planning Authority	Dublin City Council North
Planning Authority VSL Reg. Ref.	VS-0979 2022
Site Owner	Dublin Port Company.
Planning Authority Decision	Charge Levy
Date of Site Visit	18 February 2024.
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 2022 amounting to €280,000 for vacant site lands at a Site adjacent to the Tunnell Control Building, East Wall Road, Dublin 3, and identified as VS-0979. The notice was issued to Dublin Port Company and dated 6 October 2023. Dublin Port Company 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 21 January 2019. The value of the subject site was amended on appeal to the Valuation Tribunal and stands at a stated value of €4,000,000, Order dated 12 October 2022.
- 1.3. A Notice of Proposed Entry on the Vacant Sites Register was issued on the 12 March 2018. On the 17 May 2018, the Notice of Entry on the Vacant Sites Register was issued to the owner. This section 7(3) notice was appealed to the Board and confirmed by same on the 5 November 2018.

2.0 Site Location and Description

- 2.1. The site is located in the East Wall area, east of Dublin City centre, close to the north docks and adjacent to the Port Tunnel Control Building. It is a large, level and rectangular shaped site. The boundaries of the site comprise high concrete walls with a palisade fence and gate forming the partition of the site from car park lands to the north west. The interior of the site has an amount of hardstanding, but the overall site is mostly colonised by scrub vegetation. A small electricity substation building is located in the south-eastern corner of the site. The high boundary wall along the East Wall Road comprises roughcast render and shows no signs of dilapidation or lack of maintenance. Amounts of vegetation growing within the site are visible from the public realm. A new pedestrian crossing, and cycle segregation gate are currently under construction at the western end of the site at the junction of East Wall Road and East Road.

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 17 May 2018, this notice was appealed to the Board 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.

3.2. Development Plan Policy

3.2.1. Dublin City Development Plan 2022-2028

3.2.2. 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. The Dublin City Development Plan 2022-2028 is the operative development plan for this appeal.

3.2.3. The site is zoned Z6 Employment/Enterprise - To provide for the creation and protection of enterprise and facilitate opportunities for employment creation.

14.8 Vacant Site Levy

The Urban Regeneration and Housing Act, 2015, (as amended) made provision for a vacant site levy to incentivise the development of vacant and under-utilised sites in urban areas for housing and regeneration purposes. The Act enables local authorities to provide a specific objective in their development plan for the development and re-use of vacant sites in specific locations within urban areas

where it is considered beneficial towards securing the objectives of the core strategy. The Act sets out two broad categories of vacant land that the levy may apply to:

- Lands zoned solely or primarily for residential purposes in accordance with Section 10 (2)(a) of The Act.
- Lands identified with the objective of development and renewal of areas in need of regeneration in accordance with Section 10(2) (h) of The Act.

For the purposes of the Act and the implementation of provisions relating to the vacant site levy, the following comprise lands which are zoned solely or primarily for residential purposes in accordance with Section 10 (2)(a) of The Act:

- Z1 Sustainable Residential Neighbourhoods - To protect, provide and improve residential amenities.
- Z2 Residential Neighbourhoods (Conservation Areas) - To protect and/or improve the amenities of residential conservation areas.
- Z8 Georgian Conservation Areas - To protect the existing architectural and civic design character, and to allow only for limited expansion consistent with the conservation objective.
- Z10 Inner Suburban and Inner City Sustainable Mixed-Uses - To consolidate and facilitate the development of inner city and inner suburban sites for mixed-uses.
- Z12 Institutional Land (Future Development Potential) - To ensure existing environmental amenities are protected in the predominantly residential future use of these lands.

Residential lands identified in the city's SDRAs (Z14 zones: To seek the social, economic and physical development and/or regeneration of an area with mixed-use, of which residential would be the predominant use) as these lands are the crucial redevelopment and regeneration areas in the city - see also Chapter 13: Strategic Development and Regeneration Areas and also SDZ Planning Schemes and LAPs where relevant.

Section 10(2)(h) of The Act provides that a development plan shall include objectives for the development and renewal of areas, that are in need of regeneration, in order to prevent: adverse effects on existing amenities in such areas, in particular, as a result of the ruinous or neglected condition of any land; urban blight and decay; anti-social behaviour, or; a shortage of habitable houses or of land suitable for residential use or a mixture of residential and other uses. In accordance with Section 10(2)(h) of The Act, and for the purpose of implementation of the Urban Regeneration and Housing Act 2015 (as amended), the following land-use zoning objectives are identified as they may contain lands in need of regeneration/renewal:

- Z3 Neighbourhood Centres - To provide for and improve neighbourhood facilities.
- Z4 Key Urban Villages and Urban Villages - To provide for and improve mixed-services facilities.
- 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.
- Z6 Employment/Enterprise - To provide for the creation and protection of enterprise and facilitate opportunities for employment creation.
- Z7 Employment (Heavy) - To provide for the protection and creation of industrial uses, and facilitate opportunities for employment creation including Port Related Activities.

3.2.4. Dublin City Development Plan 2016-2022

The site is located on lands that were subject to zoning objective Z6 – ‘To provide for the creation and protection or enterprise and facilitate opportunities for employment creation.’

3.3. Planning History

3.3.1. Subject Site:

PA reference 2552/15 and ABP reference PL29N.245738. Permission for Aviation fuel pipeline crosses to the front of the site. April 2016.

3.3.2. VSR History:

ABP Reference ABP-**301846**-18 – Entry on to Vacant Site Levy confirmed 5 November 2018.

4.0 **Planning Authority Decision**

4.1. **Register of Vacant Sites Report:**

4.1.1. Register of Vacant Sites Report - The site is zoned under objective Z6 - 'To provide for the creation and protection of enterprise and facilitate opportunities for employment creation.'. The site is classified as regeneration land and has been vacant or idle for the last 12 months. The site is subject to antisocial behaviour. The site is overgrown with no buildings except for an electricity building. The majority of the site is vacant/idle and the condition of the site has adverse effects on existing public infrastructure and facilities and has adverse effects on the character of the area. Site should be included on the VSR. The report is supported by colour photographs.

4.2. **Planning Authority Notices**

- 4.2.1. A Notice of Proposed Entry on the Vacant Sites Register was issued to Dublin Port Company on the 12 March 2018.
- 4.2.2. On the 17 May 2018, the Notice of Entry on the Vacant Sites Register under section 5(1)(b) was issued to Dublin Port Company. This section 7(3) notice was appealed to the Board and confirmed by same on the 5 November 2018.
- 4.2.3. A valuation pertaining to the site was issued by Dublin City Council on the 21 January 2019. After an appeal to the Valuation Tribunal, the value of the site was reduced by Order dated 12 October 2022, the value of the subject site is stated to be €4,000,000.
- 4.2.4. A Notice of Demand for Payment of Vacant Site Levy for 2022 under Section 15 of the Urban Regeneration and Housing Act was issued to Dublin Port Company on the 6 October 2023 to the value of €280,000.*

* Concurrent appeals for the years 2019, 2020 and 2021, respective reference numbers ABP-318488-23, ABP-318390-23, ABP-318391-23 all refer.

5.0 The Appeal

5.1. Grounds of Appeal

5.1.1. 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:

- As a result of permission granted for the MP2 Project (ABP-304888-19), condition 16 requires the implementation of the community gain proposals, appeal site (Polefield) to be sold, a plan is therefore in place. This was not considered by the Board in their direction that stated there are no plans or agreements in place to progress community gain for the site.
- Development feasibility study for 90 residential units. LDA, submission on the development plan to rezone, sale agreed to the LDA December 2019, sale collapsed.
- The dockland character of the area is not affected, though residential uses are to be found in the area, the current land use zoning (Z6) for the site, does not allow residential uses. ESB intend to propose infrastructure in the area and the TII are of the view that residential uses are not appropriate here.
- The site is not ruinous or in poor condition and no antisocial behaviour takes place. There has been no reduction in houses in the area as evidenced by existing and permitted residential development.

5.1.2. The appeal is accompanied by the demand notice and map.

5.2. Planning Authority Response

5.2.1. Condition 16 of ABP-304888-19, MP2 Project, refers to a contribution of 50% site value of Polefield, based on site value or sales, no community gain (city farm) projects have progressed and the appeal site remains vacant, as of 19 December 2023.

5.2.2. Because the site has no use and presents a blank frontage to the road, the site complies with the requirements of section 5(1)(b) of the 2015 Act. An adverse effect on the character of the area results.

5.3. Appellant Response

5.3.1. Advanced plans have been progressed for the site, and the site should be removed from the register, a detailed timeline is provided and the appellant reiterates their grounds of appeal.

5.3.2. The appellant is critical of the planning authority's assessment of the site in 2023 and highlight the following issues: adverse effects are not specified, reductions in amenity or infrastructure have not been listed, adverse effects to character are not identified, and no reference is made to section 6(6) of the 2015 Act. The appellant reiterates that the site is part of a docklands area and does not affect the character, cannot be developed for residential uses, is well maintained, secure and managed.

6.0 Assessment

6.1. Introduction

6.1.1. This current appeal refers to a levy charge demanded by the planning authority for the year 2022. The planning authority has also demanded charges for the same site for the years 2019, 2020, 2021 and this forms the basis for concurrent appeals, reference numbers ABP-318488-23, ABP-318390-23, ABP-318391-23 all refer. The valuation placed on the site was appealed to the Valuation Tribunal on the 12 October 2022 hence the reason for the delay and grouping of demand notices. This matter is not raised as an issue in the grounds of appeal.

6.1.2. 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.

6.2. The site is no longer vacant

6.2.1. 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 2022 or at the time the appeal was lodged, the 2 November 2023.

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

6.3. Is it a Vacant Site?

6.3.1. A Section 7(3) Notice of Entry on the Vacant Sites Register was issued on the 17 May 2018, under the terms of section 5(1)(b) of the 2015 Act. At that time the site was zoned Z6 and the criteria for regeneration lands was correctly applied and the site placed on the register. This section 7(3) notice was appealed to the Board and confirmed by same on the 5 November 2018.

- 6.3.2. The appellant highlights that the Inspector with reference to the section 9 appeal (ABP-301846-18) was of the view that the site did not qualify as a vacant site under the terms of the 2015 Act. Nevertheless, the appellant accepts that the Board came to a different view insofar as they considered that the site was a vacant site because no plans or agreements were in place to progress a community gain initiative, no development had taken place and the site remains in the same condition as before. Furthermore, the Board considered that the site presented a blank façade to the East Wall Road, which detracts from the existing amenities and character of the area and therefore satisfies section 5(1)(b) of the 2015 Act.
- 6.3.3. The appellant now disputes the Board's conclusions and maintains that extensive work has progressed to develop the site and though no actual development has occurred on the appeal site, all of the preparatory work should be taken in to account. In addition, it is stated that though the site is technically vacant it is well maintained, not ruinous, it is secure, does not invite antisocial behaviour and adds to the character of the docklands area.
- 6.3.4. Matters on the ground have not significantly changed since 2018. Firstly, the appellant makes the point that the site is located within a wider masterplan area and that large infrastructural developments have been permitted, MP2 Project and others are at an advanced planning stage. A detailed timeline and associated documentation have all been submitted to demonstrate the complex and arduous tasks that have been completed to date.
- 6.3.5. Irrespective of any planned intentions and hopes for the wider area and the site in question, the Act is clear: the test for inclusion is the past condition of the site from the date of entry on the Register. I refer to Circular Letter PL7/2016, Appendix 3, that states: "where a vacant site has an extant planning permission associated with it, this should not be a consideration in determining whether to apply the levy. If such a site meets the criteria for a vacant site in respect of either residential or regeneration land, then the levy may be applied". In this instance, though plans and proposals have been written, agencies approached, and commitments made, no new planning application has been lodged with the planning authority for the site in question. In my opinion, the site meets the criteria for inclusion on the VSR and the intention to develop the site in the future has no weight in this assessment. It is the aim of the Act to apply to all residential or regeneration land irrespective of planning permission

or an intent to apply for planning permission or any other form of paper based administrative actions. On that basis the site can be considered for inclusion and retention on the register.

6.3.6. The appellant refers to the character of the area and that the condition of the site does not adversely affect matters that would meet any of the criteria set out in section 5(2)(b) of the 2015. As Reporting Inspector on the initial section 9 appeal, I took the view that the area is best described as docklands and that the character of the area is defined by the large expanse of wall that serves to secure the site within and shield it from public view, sections 7.7 to 7.11 of my report (ABP-301846-18) refer. My opinion remains the same despite the Board's different view and alignment with the planning authority at the time. The physical circumstances of the site have changed very little from before (2018), the site is still zoned for Employment/Enterprise and the character of the area is one of industry and enterprise. However, the Board may wish to maintain their previous view and again align with the planning authority and retain the site on the register because it meets the requirements of 5(1)(b)(ii) of the Act, in terms of effects of the site on the amenities of the area for which there are three parameters detailed in 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,

6.3.7. The Board must be satisfied that at least one of the criteria listed a) to c) above has been met in order to retain this site on the register.

6.3.8. Having regard to the previous confirmation and order issued by the Board, I accept that according to the Board the site constituted a vacant site when the Section 7(3) Notice was issued and that this matter was previously adjudicated on. I do not, therefore, propose to consider this matter further in this part of my assessment and instead look to determine if the site was no longer a vacant site on 1st January in the year concerned.

6.4. The site is no longer vacant as of the 1st of January 2022

6.4.1. The appellant has advanced various administrative and maintenance uses for the site and I have already explained that these cannot be considered, section 6.3 of my report refers. These activities are not a use for the site, the paper exercise to prepare a planning application or secure a sale is just that 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.

6.4.2. The appellant admits that the site is technically vacant and relies on all of the preparatory work that has been carried out to implement change, but none of this has happened on the ground. From my observations, the site still has no functional use and that state of affairs has remained so for some time. I am satisfied that the majority of the site was vacant or idle for the chargeable period, 2022. If matters change the owner can notify the planning authority under section 10 of the 2015 Act.

6.5. The site being vacant or idle has adverse effects on existing amenities or reduced the amenity provide by existing infrastructure and facilities in the area in which the site is situated or has adverse effects on the character of the area.

6.5.1. Thus, if it considered that the site is vacant or idle, has anything changed and does its status as vacant/idle impact upon other factors? It is stated under section 6(6) of the Act that the matters relating to adverse effects are to be determined by reference to the following criteria:

(a) Land and 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

and whether or not these matters were affected by the existence of such vacant or idle land

6.5.2. This assessment is carried out in the context of 2022 and is relevant to any changes that may have taken place since the site was placed on the register. I will consider each of the criteria a) to c) in turn in the context of the area. In this regard, I note that some minor public realm improvements are under way along the north western end

of the site. The yet to be completed pedestrian crossing and cycle facility would represent infrastructure and facilities in the vicinity of the site and collectively contribute in a small way to the character of the area. Notwithstanding these minor works, at present, I consider this area to be a logical and actual westward extension of the main Dublin Port area to the east. The character of the area is defined by very large plots, most of which are in use for large scale storage and smaller commercial units. There is significant infrastructure in the area, including strategic roads and Dublin Tunnel. A large area of traditional residential development is located to the south. However, in my view the area to which the site belongs is defined by the type and form of development that is common to large scale storage, industry and dockland areas. Lastly, the site remains zoned Z6 Employment/Enterprise and its outward appearance as viewed from the public realm is characteristic and common to the types of uses permitted on such lands.

- 6.5.3. Ruinous or neglected condition - The condition of the site remains largely as before in 2018. The high concrete boundary wall screens all view from the public realm to the interior of the site. The site interior is without a use and vegetation is slowly recolonising the lands within the boundary wall and this can be seen from the public road. The boundary wall is well maintained, it is not ruinous and shows no signs of significant neglect and lack of cosmetic and functional maintenance. It appears to me that the condition of the site remains largely unchanged from the time of the placement of the site on the register. However, I maintain my previous view and opinion of the site and I am not satisfied that the character and nature of the high boundary wall that surrounds the site, is and has been in the past adversely affecting the character of this dockland area. However, I note the previous decision of the Board to confirm placement of the site on the register for this reason.
- 6.5.4. Antisocial behaviour - I did not detect any evidence of antisocial behaviour having taken place in the past or at present.
- 6.5.5. Habitable houses and reduction in population - There is no evidence to suggest that as a result of the vacant site that there has been a reduction in the number of habitable houses, or the number of people living in the area. I note the existing housing stock to the south of the site and recently completed apartment blocks a short distance to the west. In addition to a recent permission to change the use of Seabank House across the road, from licensed premises to residential

accommodation at upper floors. Consequently, I am not satisfied that there has either been a reduction in the number of habitable houses, or the number of people living in the area.

6.5.6. In conclusion, I still consider that none of the tests in Section 6(6) of the 2015 Act are met and that the lands are neither neglected or ruinous, the site has no adverse effect on existing amenities and has not been subject to anti-social behaviour, in fact the number of residential units has increased in the area, thus the lands cannot be categorised as a vacant site as defined by Section 5(1)(b)(ii). I accept that the Board reached a different conclusion and originally placed the site on the register, but for the year concerned 2022, it is my view that the site does not meet the criteria set out in the 2015 Act and cannot therefore remain on the register.

6.5.7. For clarity, under section 18 of the 2015 Act, the Board is asked to make a determination about the site in the year concerned (in this case 2022) and on the date of the appeal (in this case 2023). I have noted that the valuation placed on the site was appealed to the Valuation Tribunal on the 12 October 2022 hence the reason for the delay and grouping of demand notices. This matter is not at issue in the grounds of appeal, but is a matter that concerns this assessment. In that context I am satisfied that it is right to consider the condition of the site up to the end of 2023 and the planning authority's report and photographs are useful in that context. I do not consider that the appearance of the site's boundary wall is out of place and affects the character of the area and none of section 5(2)(b)(ii) of the 2015 Act apply.

6.6. Levy Calculation

6.6.1. A Notice of Determination of Market Value was issued on the 21 January 2019 stating that the valuation placed on the site is €7,000,000. The owner appealed this valuation to the Valuation Tribunal and by order dated 12 October 2022, the valuation was reduced from €7,000,000 to €4,000,000.

6.6.2. 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 Dublin Port Company on the 6 October 2023 for the value of €280,000.

6.6.3. 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. If the site should remain on the register, the charge is confirmed.

- 6.6.4. The appellant has not questioned the calculation of the levy and it is clear that the simple calculation of the levy demanded is correct. If the site stands on the register than the levy charge shall be €280,000 for the year 2022.

7.0 Recommendation

- 7.1. I recommend that in accordance with Section 18 (3) of the Urban Regeneration and Housing Act 2015 (as amended), the Board should cancel the Notice of Demand for Payment of Vacant Site Levy as the site was no longer a vacant site as defined by the 2015 Act, for the year concerned or on the 2 November 2023, the date on which the appeal was made. The demand for payment of the vacant site levy under Section 15 of the Urban Regeneration and Housing Act 2015 is, therefore, cancelled. 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.

8.0 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 site being vacant or idle, it is considered that the site has no 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 effects on the character of the area, by reference to an absence of a ruinous or neglected condition, anti-social behaviour was not and is not taking place in the area, and there has not been a reduction in the number of habitable houses, or the number of people living, in the area, and thus

the Board is not satisfied that the site was a vacant site for the year concerned or on the 2 November 2023, the date on which the appeal was made. The demand for payment of the vacant site levy under Section 15 of the Urban Regeneration and Housing Act 2015 is, therefore, cancelled.

The Board considers that it is appropriate that a notice be issued to the planning authority to cancel the entry on the Vacant Site Register and cancel the demand for payment.

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.

Stephen Rhys Thomas
Senior Planning Inspector

4 March 2024