



An
Bord
Pleanála

Inspector's Report ABP-318503-23

Type of Appeal	Appeal against a Section 18 Demand for Payment of Vacant Site Levy.
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	4 th February 2024
Inspector	Stephen J. O'Sullivan

1.0 Introduction

- 1.1. This appeal refers to a Section 15 Notice issued by Dublin City Council stating their demand for a vacant site levy for the year 2022 amounting to €63,700 for a vacant site 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 24th October 2023. On 22nd November 2023 Bartra Property (Broombridge) Limited appealed the Demand for Payment Notice issued pursuant to Section 15 of the Urban Regeneration and Housing Act. The demand indicates that the amount of the levy is 7% of a site value of €910,000.
- 1.2. 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 site is to the rear of Tolka Valley Industrial Estate, c. 70 metres to the south of the Ballyboggan Road. It is 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. There is a disused shed and some shipping containers on the northern part of the site. The site lies off an access road that also serves several commercial premises to the east. 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. Section 6(6) of the act says –

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— I

a) and 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

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

- 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 the demand to the Board within 28 days. Section 18(3) of the act says –

Where the Board determines that a site was no longer a vacant site on 1 January in the year concerned, or is no longer a vacant site on the date on which the appeal under this section is made, it shall give written notice to the planning authority who shall cancel the entry on the register in respect of that site and shall cancel the demand made in respect of that year

4.0 Development Plan Policy

- 4.1. The **Dublin City Development Plan 2016-2022** was in force on 1st January 2022. The site was zoned under objective Z6 - To provide for the creation and protection of enterprise and facilitate opportunities for employment creation. Section 14.9 of the Development Plan 2016-2022 stated that the VSL will apply to lands zoned Z1, Z2, Z3, Z4, Z5, Z6, Z7, Z8, Z10, Z12 and Z14
- 4.2. The **Dublin City Development Plan 2022-2028** has been in force since 14th December 2022. The site is still zoned for enterprise and employment under objective Z6. Section 2.4.5 of the plan recognises the potential for regeneration of the Dublin Industrial Estate (of which the current site is a part) to provide housing and commercial development and states the council's intention, following the completion of feasibility studies for these industrial lands, to seek government approval for the appropriate statutory designation of these lands and to bring forward the early regeneration of these strategic lands. Objective CSO1 of the plan is to

prepare a feasibility study and local statutory plan for the Z6 land at Glasnevin to enable sustainable regeneration and development.

5.0 Planning History

- 5.1. **ABP-313542-22** – on 26th September 2023 the board confirmed a demand for payment of the vacant site levy for 2021, concluding that the site remained a vacant site on 1st January 2021.
- 5.2. **PL29N.313376, Reg. Ref. 3166/22** – There is an appeal before the board against the council's decision to refuse permission for the construction of a mixed use development including 71 apartments and 7,353m² of office space on the site. The council's decision said that amount of housing would be excessive for the Z6 employment zone; that the development would be premature and haphazard pending a revision to the zoning; and that the buildings would be too high.
- 5.3. ABP ref TA29N.**310609** – SHD application for 142 apartments refused October 2021 as the amount of housing would be contrary to the Z6 employment zoning and that the scheme would represent haphazard development.

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 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. This notice which appealed to the board, which upheld it on 23rd September 2023 stating that the site remained vacant on 1st January 2021.
- 6.2.8. 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 Bartra Property (Broombridge) Limited on 24th October 2023 for the value of €63,700. This notice which appealed to the board on 22nd November 2023. This report addresses that appeal.

7.0 The Appeal

7.1. Grounds of Appeal

- The site is not a vacant site. No argument is put forward that the site is in use. However the appeal argues that the board did not properly apply section 6(6)(a) of the 2015 act when determining that the site was vacant in the appeal of the previous demand for payment under ABP-313542-22. The land and structures in the area around the site are not in a ruinous or neglected condition, as was stated in the previous inspector's report. Therefore, by reference sub-section 6(6)(a) the vacancy of the appeal site is not having an adverse effect on the

existing amenities or the character of the area and is not reducing the amenity provided by existing public infrastructure or amenities. So it is not a vacant site for the purposes of Part 2 of the 2015 and should not be subject to a levy.

- The appeal puts forward an alternative argument that the works carried out by the owner to improve the appearance of the site – clearing rubbish and vegetation, replacing fencing and levelling the ground – are sufficient to ensure that the site is not having an adverse effect on the existing amenities or the character of the area and is not reducing the amenity provided by existing public infrastructure or amenities. Photographs are submitted to illustrate this point. So it is not a vacant site for the purposes of Part 2 of the 2015 and should not be subject to a levy

7.2. Planning Authority Response

- 7.2.1. The council states that the site was visited on 22nd May 2022 when it was in a neglected and dilapidated state. The most recent site inspection was on 15th December 2023. The works referred to in the appeal have been carried out and the accuracy of the photos submitted with it are accepted. Nevertheless the site remains vacant and there has been no discernible change in the condition of the northern end of the site. The site remains in poor condition and creates a visual blight in the area so that its vacancy has adverse effects on existing amenities and character of the area and the levy should remain payable.

8.0 Assessment

- 8.1. I would not accept the interpretation of section 6(6) of the 2015 act advanced by the appellant or that the board previously applied the wrong legal test when determining the appeal under ABP-313542-22. Section 6(6)(a) refers to land or structures in the area being in a ruinous or neglected condition. The appeal site itself is in the area and its condition is relevant in this regard. A site on the vacant site register could be in such a ruinous or neglected condition that its condition would in itself have adverse effects on the amenities and character of an area even if other land and structures around it had not reached that condition. If section 6(6)(a) referred to other land or structures in the area being in a ruinous or neglected condition, then the levy might have to be suspended until after the adverse impact of the vacancy of a site on the register had spread throughout an area. However the term 'other' does

not appear in this section of the act. Interpreting the section to imply its presence would undermine the purpose of the legislation, and the proper planning and sustainable development of the area in question generally. So I would not advise the board to do so. Therefore the fact that the properties around the current site are not in a ruinous or neglected condition would not justify cancelling the demand for payment issued by the council.

8.2. The appellant's other argument is more persuasive. The condition of the site as described in the appeal and observed during my site inspection makes it look like a vacant plot in an otherwise functional industrial estate, which is what it is. The opinion of the council that the current condition is a visual blight on the area has a reasonable basis. It would be sufficient to support a conclusion that the site is in a ruinous or neglected condition that has adverse effects on the character and amenities of the area so that it is a vacant site under Part 2 of the 2015 act and that the demand for payment should be confirmed. A particular concern in this regard is the graffiti on the fencing on the site boundary along the towpath on the Royal Canal. However, as a matter of judgment following consideration of the documents submitted in the course of appeal and a site inspection, I would be of the view that the site's owner has carried out just enough improvement works so that the current condition of the site is not ruinous or neglected to an extent that is having an adverse effect on the character and amenities of the area. So I would advise the board that the site was no longer a vacant site on the date that the current appeal was made and that it should give notice to the council to cancel the demand for payment for 2022.

8.3. In relation to the relevant dates, the demand for payment for 2022 is the one currently under appeal. The relevant date for the determination of whether the site was still vacant for the purposes of this demand in the first instance was therefore 1st January 2022. The inspector on the appeal of the previous demand for payment for 2021 under ABP-313542-22 visited the site on 21st December 2022 and found the condition of the site at that time rendered it a vacant site under Part 2 of the act. It can be inferred from this finding, and the submissions from the owner and council in the course of this appeal, that the site was a vacant site on 1st January 2022. However the council did not issue the 2022 demand for payment under 24th October 2023, shortly after the determination of the board of the appeal on the 2021 demand.

The owner made their appeal against the 2022 demand within the statutory period on 22nd November 2023. Section 18(3) of the act makes the status of a site on the day an appeal was made a relevant criterion for the decision on whether to confirm or cancel a demand for payment. So my recommendation to the board is based on the condition on the site on 22nd November 2023 and its improvement since 21st December 2022, even though the council's demand for payment would have referred to its condition in 2022.

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 conclude that site was not a vacant site on 22nd November 2023, the date on which the appeal was made and give notice to the council that the demand for payment in respect of the site in 2022 is cancelled.

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 and the issuing of the demand for payment for 2022,
- (b) The grounds of appeal submitted by the appellant,
- (c) The report of the Planning Inspector,
- (d) The condition of the site on 22nd November 2023, the day the appeal was made, which is not considered so ruinous or neglected that the site's vacancy and idleness was having adverse effects on the amenities or character of the area or the amenity provided by public infrastructure and facilities in the area,

The board concluded that the site is no longer a vacant site under Part 2 of the Urban Regeneration and Housing Act 2015, as amended.

The demand for payment of the vacant site levy issued by the planning authority in respect of the site for 2022 under section 15 of the Urban Regeneration and Housing Act 2015, as amended, is, therefore, cancelled.

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 J. O'Sullivan
Planning Inspector

5th February 2024