



An  
Bord  
Pleanála

## Inspector's Report ABP-319523-24

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### Type of Appeal

Appeal against a Section 18 Demand for Payment.

### Location

Site at junction of Appian Way, Dublin 6.

### Planning Authority

Dublin City Council South

### Planning Authority VSL Reg. Ref.

VS-0797

### Site Owner

RGRE J and R Valerys Limited.

### Inspector

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 2022 amounting to €315,000.00 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 for the year 2020 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 ABP Ref.315628-21 which the Board confirmed.

A Section 12(4) Notice of Determination of Market Value dated 9<sup>th</sup> December 2022. The value of the subject site is stated to be €4,000,000.00.

A Section 12(4) Notice of Determination of Market Value dated 28 July 2023. The value of the subject site is stated to be €4,000,000.00.

A Notice of Demand for Payment of Vacant Site Levy for the year 2022 under Section 15 of the Urban Regeneration and Housing Act was issued to RGRE J&R Appian Valery's Limited on the 15<sup>th</sup> March 2024 for the value of €315,000.00 (based on a 2019 Market valuation of €4,500,000.00. 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 accessed off Lesson Street Lower. On the opposite side along Lesson 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

There are a number of previous VSL appeals pertaining to this site which are the subject of current judicial review proceedings.

**PA Ref VS-0797 (ABP 315628-23)** 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. 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 4050/23 (ABP 318017-23)** refers to a May 2024 decision to refuse permission for retention of the erection of hoarding featuring fixed metal raining facing Appian Way and Lesson Street Upper.

**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 developemtn 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.

A Section 12(4) Notice of Determination of Market Value dated 9<sup>th</sup> December 2022. The value of the subject site is stated to be €4,000,000.00.

A Section 12(4) Notice of Determination of Market Value dated 28 July 2023. The value of the subject site is stated to be €4,000,000.00.

A Section 15 Demand for Payment Notice of 2021 Vacant Site Levy issued on the 15<sup>th</sup> March 2024 advising the owner that of the amount of €315,000.00 was due for the year 2022.

## 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 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 validity of the market valuation in accordance with section 12(1) of the Urban Regeneration and Housing Act 2015.

#### Market Value not in accordance with section 12(1) of the 2015 Act

- The Market Value of the site as detailed in the Notice was determined by the Council on 10 June 2019 as €4,500,000 to which a levy of 7% was applied (€315,000.00). In light of the previous appeal related to the site, the decision to issue the Notice was only determined in March 2024.
- Section 12(1) provides “A planning authority shall determine, as soon as may be after it is entered on the register, and at least once every 3 years thereafter, the market value of a vacant site by estimating or causing it to be estimated the price which the unencumbered fee simple of such site would fetch if it was sold on the open market on the date of the determination in such a manner and in such conditions as might reasonably be calculated to obtain for the vendor the best market price for the site”.
- The Notice is based on Valuation dated 2019 which is an outdated valuation.
- A later valuation dated 20 December 2022 is currently under appeal before the Valuation Tribunal. In accordance with section 13(8) “The planning authority shall not make a demand for payment of vacant site levy under section 13(8) *“The planning authority shall not make a demand for payment of vacant site levy under section 15...(b) where an appeal is brought under subsection (1), before the appeal is finally determined or withdrawn”*

#### Lack of fair procedures

- It is the owners position that the valuation dated 10 June 2019 which has been relied in the Notice, is a Determination of Market Value that was not served on the correct owner of the site. It is submitted that even if the



position outlined above is not accepted by ABP, in the absence of proper service on the owner, the appellant was not given an opportunity to make submissions on the valuation, or challenge the valuation placed on the site in breach of fair procedures.

- If a revised section 12 valuation was applied to the Notice this matter could have been addressed and in this absence the PA the wrongful valuation and applied the incorrect calculation of the VSL for the site.

#### Jurisdiction of the Board

- In circumstances where a section 13 appeal to the Tribunal is pending in respect of the 2022 valuation (which is submitted is the relevant valuation in the context of the section 12 Notice), the Board cannot properly determine the appeal at this time.
- In addition an incorrect valuation has been applied and therefore the calculation, based on the incorrect valuation in the Notice is incorrect.
- Furthermore, as set out in previous appeals, the valuation being relied upon in the Notice, contrary to fair procedures was never properly served on the owner.
- The levy has been incorrectly calculated due to an erroneous reliance on an incorrect valuation.
- Reference to section 18(4) of the Act which refers to the Board giving written notice to the PA of the correct amount to amend the demand.

Documentation submitted with the appeal includes:

- Deed of conveyance dated 2 October 2018.
- Knight Frank Valuation dated 23 March 2021.
- Correspondence between William Fry LLP and the Tribunal dated 11 April 2024. (appeal reference VS23/6/0006).

## **7.2 Planning Authority Response**

No response to the grounds of appeal received.

Correspondence dated 9<sup>th</sup> May 2024 sets out appeal summary in date order and file summary in date order.

## **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 and 315628-23 appeals against a section 18 Demand for Payment for the years 2020 and 2021 respectively.

### **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 2022.

### **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. An 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, 2022, 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.

I note that the transfer was register with the PRA on 9<sup>th</sup> July 2019, therefore excludes the year 2022 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 2022 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 appellant also disputes the valuation of €4,500,000.00 is correct as it is based on the 2019 market value.

Section 12 of the 2015 Act states:

- (1) A planning authority shall determine, as soon as may be after it is entered on the register, and at least once every 3 years thereafter, the market value of a vacant site by estimating or causing to be estimated the price which the unencumbered fee simple of such site would fetch if it was sold on the open market on the date of the determination in such manner and in such conditions as might reasonably be calculated to obtain for the vendor the best market price for the site*
- (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.*

*(4) Where the planning authority has determined the market value of a vacant site it shall enter particulars of the determination in the register (together with the date of entry in the register), and give written notice to the owner of the vacant site of the valuation or the revised valuation, as the case may be, which it has placed on the site and inform the owner of his or her right to appeal under section 13.*

The Market Value of the site as detailed in the Notice was determined by the Council on 10 June 2019 as €4,500,000.00 to which a levy of 7% was applied €315,000.00. In light of the previous appeals related to the site, the decision to issue the Notice was only determined in March 2024.

The appellant submits that the Section 15 Notice dated 15<sup>th</sup> March 2024 is based on a Section 12(4) Notice of Market Value dated 2019 which is an outdated valuation. And that a Section 12(4) Notice of Determination of Market Value dated 28 July 2023 is currently under appeal before the Valuation Tribunal Ref. VS23/6/0006. Therefore In accordance with section 13(8) “The planning authority shall not make a demand for payment of vacant site levy under section 13( which pertains to appeals of market value determinations to the Valuation Tribunal and in particular section 13 (8) “*The planning authority shall not make a demand for payment of vacant site levy under section 15...(b) where an appeal is brought under subsection (1), before the appeal is finally determined or withdrawn*”

The appellants submits that the Board has no jurisdiction to adjudicate a determination of market value, that is for the Valuation Tribunal to do as is currently the case under reference VS23/6/0006.

I draw the Bord’s attention to a number of discrepancies in the grounds of appeal which refer to a valuation letter dated 20<sup>th</sup> December 2022 which is the subject of an appeal to the Valuation Tribunal under reference VS23/6/0006, this is incorrect.

A Section 12(4) Notice of Determination of Market Value o (€4,000,000.00) dated 9<sup>th</sup> December 2022 was the subject of an invalid appeal to the Valuation Tribunal under reference VS23/6/0003. An amended Section 12(4) Notice of Determination of

Market Value dated 28 July 2023 is the subject of an appeal to the Valuation Tribunal under reference VS23/6/0006. The value of the subject site is stated to be €4,000,000.00. And while the incorrect notice and dates are referenced in the grounds of appeal, the fact remains is that there is a current appeal before the Valuation Tribunal that affects the subject site.

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 15<sup>th</sup> March 2024 for the value of €315,000.00 (based on a 2019 Market valuation of €4,500,000.00).

Based on the information on file it is evident that the levy calculation has been incorrectly calculated as it is based on the 2019 valuation of €4,500,000.00 and not the current valuation of €4,000,000.00 which is the subject of a current appeal before the Valuation Tribunal. As such I am of the view that the charge demanded cannot be confirmed and should be set at zero for the year concerned, i.e. 2022.

## **9.0 Recommendation**

I recommend that the demand for payment of the vacant site levy under Section 15 of the Urban Regeneration and Housing Act 2015 is cancelled. In accordance with Section 18 (4) of the Urban Regeneration and Housing Act 2015 (as amended), the Board should correct the amount of levy demand to nought, as the Section 15(4) Notices relied on a 2019 valuation which has been superseded by a 2023 valuation which is the subject of a current appeal before the Valuation Tribunal and so the amount of levy was not properly calculated in respect of the vacant site.

## **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 Section 15(4) Demand for Payment Notices refers to the 2019 Market Value of €4,500.000.00,

(e) The Section 12(4) Notice of Determination of Market Value dated 28 July 2023. With the value of the subject site is stated to be €4,000,000.00 which is on appeal before the Valuation Tribunal under Ref. VS23/6/0006,

and thus the Board could not be satisfied that the Section 15(4) Demand for Payment Notices dated 15<sup>th</sup> March 2024 has been correctly calculated as it refers to the 2019 Market Value of €4,500.000.00. The Board considers that it is appropriate that a notice be issued to the planning authority to cancel the demand for payment of the vacant site levy under Section 15 of the Urban Regeneration and Housing Act 2015 which is the subject of this appeal.

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

23<sup>rd</sup> July 2024