



An  
Bord  
Pleanála

## Inspector's Report ABP-320011-24

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### Type of Appeal

Appeal against a Section 18 Demand for Payment (VS-0449).

### Location

Vacant site to the rear of 134-139 Phibsborough Road, Devery's Lane, Phibsborough, Dublin 7.

### Planning Authority

Dublin City Council North

### Planning Authority VSL Reg. Ref.

VS-0449

### Site Owner

Paul Newman and Keith Lowe

### Inspector

Terence McLellan

## 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 2023 amounting to €45,500.00. for vacant site lands to the rear of 134-139 Phibsborough Road, Devery's Lane, Phibsborough, Dublin 7, identified as VS-0449. The site has two stated registered owners, Paul Newman and Keith Lowe.
- 1.2. A Notice of Proposed Entry on the Vacant Sites Register was issued to Paul O'Brien (previous owner), on the 8<sup>th</sup> March 2018. A subsequent Notice of Entry on the Vacant Sites Register was issued to Paul O'Brien on the 17<sup>th</sup> May 2018. This section 7(3) notice was not appealed to the Board.
- 1.3. A valuation pertaining to the site was issued by Dublin City Council on the 21<sup>st</sup> January 2019. The value of the subject site was stated to be €400,000.00. A Notice of Demand for Payment of Vacant Site Levy for the year 2019 under Section 15 of the Urban Regeneration and Housing Act was issued to Paul O'Brien on the 26<sup>th</sup> February 2020 for the value of €28,000.00. The previous owner (Paul O'Brien) appealed the Demand for Payment Notice issued pursuant to Section 15 of the Urban Regeneration and Housing Act under ABP-306967-20 which the Board confirmed.
- 1.4. 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 Paul O'Brien on the 17<sup>th</sup> June 2021 for the value of €28,000.00.
- 1.5. 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 Paul O'Brien on the 15<sup>th</sup> March 2022 for the value of €28,000.00.
- 1.6. A Section 12(4) Notice of Determination of Market Value was issued Paul O'Brien dated the 14<sup>th</sup> April 2022. The value of the subject site was stated to be €650,000.00.
- 1.6.1. A Section 17 Change of Ownership Notice dated the 12<sup>th</sup> July 2022 was issued, confirming approval that Paul Newman and Keith Lowe replace Paul O'Brien and that the sale of the site completed in 2021. This Notice also cancelled the Demand for Vacant Site Levy for 2020 and 2021 served on Paul O'Brien.

- 1.7. 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 Paul Newman and Keith Lowe on the 28<sup>th</sup> April 2023 for the value of €28,000.00.
- 1.8. A Notice of Demand for Payment of Vacant Site Levy for the year 2023 under Section 15 of the Urban Regeneration and Housing Act was issued to Paul Newman and Keith Lowe on the 31<sup>st</sup> May 2024 for the value of €45,500.00. The Appellants, Paul Newman and Keith Lowe, appealed the Demand for Payment Notice issued pursuant to Section 15 of the Urban Regeneration and Housing Act, which forms the current appeal before the Board.

## **2.0 Site Location and Description**

- 2.1. The subject site is located at Devery's Lane and to the rear of 134-139 Phibsborough Road. Phibsborough village and Phibsborough Shopping Centre is located in the vicinity. The site is located along the northern edge of a narrow laneway from Phibsborough Road that provides access to a number of commercial properties. A further private laneway runs along the northern edge of the site and provides access to the rear of the terraced dwellings on Royse Road.
- 2.2. The site boundaries are marked by galvanised steel fencing, concrete block wall to sheds along the eastern boundary, palisade fencing to the rear laneway of Royse Road and a hedgerow to the west. The site interior is level and comprises a combination of hardstanding and overgrown ground with a small block building and a number of other steel objects.

## **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) of the Act. A section 7(3) Notice was issued on the 17<sup>th</sup> May 2018 and the site was subsequently entered onto the register on that date.

3.1.2. Section 18 of the Act states that the owner of a site who receives a demand for payment of a vacant site levy under section 15, may appeal against the demand to the Board within 28 days. The burden of showing that:

- (a) the site was no longer a vacant site on 1st January in the year concerned, or
- (b) the amount of the levy has been incorrectly calculated in respect of the site by the Planning Authority,

is on the owner of the site.

## **4.0 Development Plan Policy**

4.1. The relevant plan is Dublin City Development Plan 2022-2028.

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

4.3. 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.

4.3.1. Objectives of note include inter alia:

- CSO8 Promote Active Land Management: To promote active land management including the vacant site levy and the Living City Initiative as a means to encourage brownfield development and densification in the city.
- CSO9 Vacant Sites: To implement the vacant site levy for vacant development sites as appropriate in the city and to continue to make a publicly available register of vacant sites as set out in the Urban Regeneration and Housing Act, 2015 or any superseding Act.
- CEE20 Vacant Sites: (i) To engage in the 'active land management' of vacant sites and properties including those owned by Dublin City Council. (ii) To engage proactively with land-owners, potential developers and investors with the objective of encouraging the early and high quality re-development of such vacant sites. (iii) To encourage and facilitate the rehabilitation and use of vacant and under-utilised buildings, including their upper floors. (iv) To promote and

facilitate the use, including the temporary use, of vacant commercial space and vacant sites, for a wide range of enterprise including cultural uses.

## 5.0 Planning History

- 5.1. **ABP-306967-20 Planning Authority Reference VS/0449:** This refers to an appeal by Paul O'Brien against a section 18 Demand for Payment of a Vacant Site Levy. The Board determined that the site was a vacant site within the meaning of the act, and that the amount of the levy had 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.
- 5.2. **Planning Authority Reference 3573/17** – Permission was granted by Dublin City Council in November 2017 for the demolition of existing single storey building and construction of detached three storey building comprising ground floor office and two storey own door duplex apartments (3 bed) with balconies at first and second floor. The development included the widening of Devery's Lane for new footpaths, hammerhead, street lighting, car and bicycle parking. Development included the construction of a detached three storey residential building comprising four ground floor garden apartments and four duplex apartments with balconies at first floor.
- 5.3. **Planning Authority Reference 3261/24:** Permission was granted by Dublin City Council in December 2024 for the demolition of the existing single storey building and construction of a three storey building (Block A) comprising of ground floor use as retail/estate agent and three apartments, construction of a detached three storey residential apartment building (Block B) comprising of 10 apartments.

### *Enforcement History*

- 5.4. **E0203/17:** Commercial car park at yard off Devery's Lane. Use ceased.
- 5.5. **E0707/12:** Alleged unauthorised use of the yard as a commercial car park. Warning letter complied with.

## **6.0 Planning Authority Decision**

### **6.1. Register of Vacant Site Report**

- 6.1.1. A Register of Vacant Site Report is not on file. A subsequent Vacant Site Levy Report confirms that the site is zoned Z1 – Sustainable Residential Neighbourhoods in the 2022-2028 Dublin City Development Plan. The report details the enforcement history of the site in relation to the unauthorised use as a commercial car park and confirms that no permission has been granted for a car park. The report states that there is a need for housing in the area, evidenced by a previous grant of permission for nine residential units on lands which contain this site. The lands are still deemed to be vacant and idle under Section 5(1)(a) of the Act.

### **6.2. Planning Authority Notice**

- 6.3. A Notice of Proposed Entry on the Vacant Sites Register was issued to Paul O'Brien (previous owner), on the 8<sup>th</sup> March 2018. On the 17<sup>th</sup> May 2018, the Notice of Entry on the Vacant Sites Register was issued to Paul O'Brien. The section 7(3) notice was not appealed to the Board.
- 6.4. A valuation pertaining to the site was issued by Dublin City Council on the 21<sup>st</sup> January 2019. The value of the subject site is stated to be €400,000.00. A Notice of Demand for Payment of Vacant Site Levy for the year 2019 under Section 15 of the Urban Regeneration and Housing Act was issued to Paul O'Brien on the 26<sup>th</sup> February 2020 for the value of €28,000.00. The previous owner (Paul O'Brien) appealed the Demand for Payment Notice issued pursuant to Section 15 of the Urban Regeneration and Housing Act under ABP Ref.306967-20 which the Board confirmed.
- 6.5. 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 Paul O'Brien on the 17<sup>th</sup> June 2021 for the value of €28,000.00.
- 6.6. 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 Paul O'Brien on the 15<sup>th</sup> March 2022 for the value of €28,000.00.

- 6.7. A Section 12(4) Notice of Determination of Market Value was issued Paul O'Brien dated the 14<sup>th</sup> April 2022. The value of the subject site was stated to be €650,000.00.
- 6.7.1. A Section 17 Change of Ownership Notice dated the 12<sup>th</sup> July 2022 was issued, confirming approval that Paul Newman and Keith Lowe replace Paul O'Brien and that the sale of the site completed in 2021. This Notice also cancelled the Demand for Vacant Site Levy for 2020 and 2021 served on Paul O'Brien.
- 6.8. 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 Paul Newman and Keith Lowe on the 28<sup>th</sup> April 2023 for the value of €28,000.00.
- 6.9. A Notice of Demand for Payment of Vacant Site Levy for the year 2023 under Section 15 of the Urban Regeneration and Housing Act was issued to Paul Newman and Keith Lowe on the 31<sup>st</sup> May 2024 for the value of €45,500.00. The Appellants, Paul Newman and Keith Lowe, 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.

## **7.0 The Appeal**

### **7.1. Grounds of Appeal**

- 7.1.1. The landowner has submitted an appeal to the Board, against the decision of Dublin City Council's Demand for Payment. The grounds of the appeal can be summarised as follows:
- The site has been used as a car park for decades.
  - No warning letter or enforcement notice has been issued by the Planning Authority and therefore the seven year rule applies.
  - The outbuilding on site has been used for storage for many years.
  - Staff in adjacent offices have been using the car park for over ten years and prior to that the site was used as a car park for the catering service.
  - The site is not and never was a vacant site.

## **7.2. Planning Authority Response**

7.2.1. No response on file.

## **8.0 Assessment**

### **8.1. Principle**

8.1.1. 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.

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

8.2.1. The Board are aware that 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 2023. For the purposes of this assessment, I will consider both scenarios.

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

8.3.1. A Section 7(3) Notice of Entry on the Vacant Sites Register was issued on the 17<sup>th</sup> May 2018. 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 and the decision to place the site on the register was not appealed to the Board by the owner at that time. These matters have not changed.

8.3.2. The Board should also note that a previous appeal against a Demand for Payment Notice was made to the Board by the previous owner under ABP-306967-20 which the



Board confirmed. On that appeal, the Appellant at that time did not dispute the vacant nature of the site. There has been no significant change in the nature or use of the site.

- 8.3.3. The Appellants claim that the site is not vacant or idle on the basis that it is has been used for car parking and storage, which continues to this day. The Board should note that there is an enforcement history on the site with regards the use of the site as an unauthorised commercial car park. The Planning Authority have confirmed that no planning permission has been granted for a car park on this site and despite the Appellants' claims regarding the use of the site as a car park, the Appellant has not provided satisfactory evidence to suggest that the use has the benefit of planning permission.
- 8.3.4. The Appellant also argues that the site has been used as a car park for decades and that, in the absence of an enforcement notice, the seven year rule would apply. Enforcement is a matter for the Planning Authority who have reported that there is an enforcement history on the site relating to the unauthorised use as a car park. In any event, the seven year rule referred to by the Appellants simply refers to the time limit in which a Planning Authority can take enforcement action, it does not result in a default grant of permission and an unauthorised development would remain unauthorised. In this respect, Section 6(7) of the Act states that no regard shall be had to any unauthorised development or unauthorised use.
- 8.3.5. The site is zoned Sustainable Residential Neighbourhoods and is located in an area in which there is a need for housing. The site is suitable for housing, as evidenced by the 2017 planning permission and the more recent permission granted in 2024. The site has no clear beneficial use and in terms of criteria set out in Section 5(1)(a) of the Act, I consider that the site is vacant and being used for a purpose that does not consist solely or primarily of the provision of housing or the development of the site for the purposes of such provision. I am therefore satisfied that for the period concerned, 2023, the site remained a vacant site for the purposes of the 2015 Act and this enables a charge to be levied.

#### **8.4. Levy Calculation**

- 8.4.1. A Notice of Demand for Payment of 2023 Vacant Site Levy under Section 15 of the Urban Regeneration and Housing Act was issued to Paul Newman and Keith Lowe on 31<sup>st</sup> May 2024 by Dublin City Council, stating their demand for a vacant site levy for the year 2023 amounting to €45,500.00 based on a site valuation of €650,000.00.
- 8.4.2. The applicable rate is 7% and it is evident, therefore, that the levy calculation has been correctly calculated. The Demand Notice issued under Section 15 of the 2015 Act correctly states the levy due. The appellant has not queried the calculation of the levy and I am satisfied that the levy calculation is correct.

#### **9.0 Recommendation**

- 9.1. I recommend that, in accordance with Section 18 (3) of the Urban Regeneration and Housing Act 2015 (as amended), the Board should confirm that the site was a vacant site as of the 1<sup>st</sup> of January 2023 and was a vacant site on 26<sup>th</sup> June 2024, 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 for the period concerned,

(f) The amount of the levy has been correctly calculated at 7% of the site value in 2023,

(g) There has been no change in the ownership of the site during the period concerned, 2023,

The Board is satisfied that the site was a vacant site on the 1<sup>st</sup> of January 2023 and was a vacant site on 26<sup>th</sup> June 2024, 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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Terence McLellan  
Senior Planning Inspector

22<sup>nd</sup> January 2025