



An
Bord
Pleanála

Inspector's Report ABP-320027-24

Type of Appeal	Appeal against a Section 18 Demand for Payment.
Location	Demand for payment of Vacant Site Levy for 1-4 Brandon Terrace, Dublin 8
Planning Authority	Dublin City Council South
Planning Authority VSL Reg. Ref.	VS-0043
Site Owner	Bord Oispideal Naoimh Sheamus.
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 €44,100 for the vacant site at 1-4 Brandon Terrace, Dublin 8, identified as VS-0043. The appeal site has one stated registered owner, Bord Oispideal Naoimh Sheamus (St James' Hospital).
- 1.2. A Notice of Proposed Entry on the Vacant Sites Register was issued to Bord Oispideal Naoimh Sheamus on 19th June 2017. On the 28th July 2017, the Notice of Entry on the Vacant Sites Register was issued to Bord Oispideal Naoimh Sheamus. 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 23rd May 2018. The value of the subject site was stated to be €450,000.00.
- 1.4. A Notice of Demand for Payment of Vacant Site Levy for the year 2018 under Section 15 of the Urban Regeneration and Housing Act was issued to Bord Oispideal Naoimh Sheamus on the 12th February 2019 for the value of €13,500.00.
- 1.5. 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 Bord Oispideal Naoimh Sheamus on the 24th February 2020 for the value of €31,500.00.
- 1.6. 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 Bord Oispideal Naoimh Sheamus on the 26th February 2021 for the value of €31,500.00.
- 1.7. A Section 12(4) Notice of Determination of Market Value was issued to Bord Oispideal Naoimh Sheamus dated 14th April 2022. The value of the subject site was stated to be €630,000.00
- 1.8. 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 Bord Oispideal Naoimh Sheamus on the 5th July 2022 for the value of €44,100.00. This notice was cancelled and reissued on 27th September 2022 for a total amount of €31,500.00 as the revised market value notified on the 14th April 2022 was not recorded on the Vacant Sites Register for the requisite 12 calendar months. The reissued notice states that the revised market valuation will apply to 2023.

- 1.9. 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 Bord Oispideal Naoimh Sheamus on the 28th April 2023 for the value of €31,500.00.
- 1.10. 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 Bord Oispideal Naoimh Sheamus on the 31st May 2024 for the value of €44,100.00. The Appellant, Bord Oispideal Naoimh Sheamus, 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

- 2.1. The subject site refers to land at 1-4 Brandon Terrace, which has a stated area of approximately 0.0736 hectares. The previous dwellings at 1-4 Brandon Terrace have been demolished. The site is bounded to the north by the grounds of the Canal Way Educate Together facility, to the east by open brownfield land that is occupied by some shipping/storage containers, and to the south by James's Walk and the adjacent two storey terraced dwellings. Opposite the site on Brandon Terrace is a part eight/part five storey development of flatted dwellings. The site is proximate to Fatima Luas stop, which is located to the west.

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 Planning Authority 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 28th July 2017, 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

- 4.1. The relevant plan is the Dublin City Development Plan 2022-2028.
- 4.2. The site is zoned Z10 inner Suburban and Inner City Sustainable mixed Uses, with a stated objective 'to consolidate and facilitate the development of inner city and inner suburban sites for mixed-uses'.
- 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 and policies 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 Reference ABP-306891-20:** Demand of Vacant Site Levy for 1-4 Brandon Terrace, Dublin 8. Invalid.
- 5.2. **Planning Authority Reference 4170/17:** Demolition and removal of four derelict Houses (1-4 Brandon Terrace), various derelict industrial buildings and sheds, associated boundary walls, the termination where appropriate and making safe of on-site services, clearing of the site and the reinstatement of boundary walls and railings. Treated as Withdrawn under Article 33.
- 5.3. **Planning Authority Reference 4816/05 – 4 Brandon Terrace:** Permission granted by Dublin City Council in December 2005 for the refurbishment of the existing dwelling and subdivision into 1 no. 3 bed apartment and 1 no. 2 bed apartment.
- 5.4. **Planning Authority Reference 0547/01 – 3 Brandon Terrace:** Permission granted by Dublin City Council in July 2001 for the demolition of the existing dwelling and reconstruction of two no. two storey townhouses with converted attic spaces, together with associated site works.

6.0 Planning Authority Decision

6.1. Register of Vacant

- 6.1.1. A Register of Vacant Sites Report is not on file.

6.2. Planning Authority Notice

- 6.2.1. A Notice of Proposed Entry on the Vacant Sites Register was issued to Bord Oispideal Naoimh Sheamus on 19th June 2017. On the 28th July 2017, the Notice of Entry on the Vacant Sites Register was issued to Bord Oispideal Naoimh Sheamus. This section 7(3) notice was not appealed to the Board.
- 6.2.2. A valuation pertaining to the site was issued by Dublin City Council on 23rd May 2018. The value of the subject site was stated to be €450,000.00.

- 6.2.3. A Notice of Demand for Payment of Vacant Site Levy for the year 2018 under Section 15 of the Urban Regeneration and Housing Act was issued to Bord Oispideal Naoimh Sheamus on the 12th February 2019 for the value of €13,500.00.
- 6.2.4. 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 Bord Oispideal Naoimh Sheamus on the 24th February 2020 for the value of €31,500.00.
- 6.2.5. 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 Bord Oispideal Naoimh Sheamus on the 26th February 2021 for the value of €31,500.00.
- 6.2.6. A Section 12(4) Notice of Determination of Market Value was issued to Bord Oispideal Naoimh Sheamus dated 14th April 2022. The value of the subject site was stated to be €630,000.00
- 6.2.7. 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 Bord Oispideal Naoimh Sheamus on the 5th July 2022 for the value of €44,100.00. This notice was cancelled and reissued on 27th September 2022 for a total amount of €31,500.00 as the revised market value notified on the 14th April 2022 was not recorded on the Vacant Sites Register for the requisite 12 calendar months. The reissued notice states that the revised market valuation will apply to 2023.
- 6.2.8. 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 Bord Oispideal Naoimh Sheamus on the 28th April 2023 for the value of €31,500.00.
- 6.2.9. 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 Bord Oispideal Naoimh Sheamus on the 31st May 2024 for the value of €44,100.00. The Appellant, Bord Oispideal Naoimh Sheamus, 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 is not vacant or idle. Since 2017 it has been in use for hospital related activities including storage and the provision of a mock-up of the proposed children's hospital.
- It is noted that the site is being used for a purpose that does not consist solely or primarily of housing, however, the most recent purchase of the site occurred in 2014, after it became zoned residential land and before the commencement of Section 63 of the Planning and Development (Amendment) Act 2018.
- In addition to meeting all of the relevant criteria of Section 5 of the Act, sites must also be further supported by satisfying the criteria in Section 6 of the Act, particularly Section 6(6).
- In relation to Section 6(6), significant works have been carried out since 2020 to enable the site to be removed from the register, including the demolition of derelict and dangerous structures, site clearance, asbestos removal, disposal of accumulated waste, secure enclosure and management.
- The site has been active since 2017 and is not vacant, ruinous, or neglected. Anti-social behaviour has ceased and the fact that the site has not been developed has not resulted in there being a reduction in habitable houses or people living in the area (evidenced by the developments around Grand Canal Basin).
- Section 5(1)(a) of the 2015 Act has been met, the site was no longer a vacant site on the 1st January 2023.

7.2. Planning Authority Response

7.2.1. No response on file.

8.0 Assessment

8.1. Introduction

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.

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 28th July 2017. 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.

8.3.2. The Appellant disputes the vacant nature of the site, stating that it has been in use for hospital related activities including storage and the provision of a mock-up of the proposed children's hospital since 2017. The Appellant notes that the site is being used for a purpose that does not consist solely or primarily of housing, however, they contend that the most recent purchase of the site occurred in 2014, after it became

zoned residential land and before the commencement of Section 63 of the Planning and Development (Amendment) Act 2018.

- 8.3.3. The majority of the site is vacant cleared land although as noted by the Appellant, a small section of the site accommodates shipping/storage containers that the Appellant states is used for hospital storage. The Board should also note that there is no record of any planning permission for the storage containers and the owner has not provided evidence to suggest that this use has the benefit of planning permission.
- 8.3.4. The Appellant acquired the site in October 2014. At this time the site was zoned Z10 where the zoning objective was 'To consolidate and facilitate the development of inner city and inner suburban sites for mixed-use development of which office, retail and residential would be the predominant uses'.
- 8.3.5. Whilst I note the Appellants point that the zoning objective sought a mixed use, the objective is clear that residential would be a predominant use and I do not consider that the intent of the zoning objective has changed significantly since 2014 as the site is still zoned Z10 which seeks mixed use development including residential. I am therefore satisfied that the Appellant acquired the site after it became residential land and as such satisfies the vacant site criteria set out in Section 5(1)(a)(iii)(II) of the Act.
- 8.3.6. The Appellant considers that for residential land to be placed on the register of Vacant Sites, it should not only meet the criteria in Section 5, but also satisfy the criteria of Section 6 of the Act, particularly Section 6(6). The Appellant asserts that significant works have been carried out since 2020 in order to enable the site to be removed from the register, including the demolition of derelict and dangerous structures, site clearance, asbestos removal, disposal of accumulated waste, secure enclosure and management. In regard to Section 6(6), the Appellant states that the site has been active since 2017 and is not vacant, ruinous, or neglected, anti-social behaviour has ceased and the fact that the site has not been developed has not resulted in there being a reduction in habitable houses or people living in the area (evidenced by the developments around Grand Canal Basin).
- 8.3.7. I consider that these are short term activities that are not being carried out as part of any existing planning permission to develop the site for housing and in my view they do not overcome the vacancy of the site. In any event, the Board should note that

Section 6(6) of the Act is the test set out for regeneration land, which would not apply to this residential zoned site.

- 8.3.8. The site is zoned Z10 - Inner Suburban and Inner City Sustainable Mixed Uses, with a stated objective 'to consolidate and facilitate the development of inner city and inner suburban sites for mixed-uses', with residential being a predominant use. The site is located in an area in which there is a need for housing and the site is suitable for housing, being located on serviced urban lands in an accessible location with new housing development in nearby areas. The site currently has no clear beneficial use and in terms of the 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 Bord Oispideal Naoimh Sheamus on 31st May 2024 by Dublin City Council, stating their demand for a vacant site levy for the year 2023 amounting to €44,100.00 based on a site valuation of €630,000.00.
- 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 it is clear that the simple calculation of the levy demanded 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 1st of January 2023 and was a vacant site on 27th 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 1st January 2023 and was a vacant site on 27th 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.

Terence McLellan
Senior Planning Inspector

22nd January 2025