



An  
Bord  
Pleanála

## Inspector's Report ABP-303049-18

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<b>Type of Appeal</b>	Section 9 Appeal against section 7(3) Notice.
<b>Location</b>	Ballymany, Newbridge, Co Kildare.
<b>Planning Authority</b>	Kildare County Council.
<b>Planning Authority VSL Reg. Ref.</b>	VS002.
<b>Site Owner</b>	Cowlara Ltd.
<b>Planning Authority Decision</b>	Place on Register.
<b>Date of Site Visit</b>	21 February 2019.
<b>Inspector</b>	Stephen Rhys Thomas.

## 1.0 Introduction

- 1.1. This appeal refers to a section 7(3) notice issued by Kildare County Council, stating their intention to enter a site at Ballymany, Newbridge, County Kildare on to the Vacant Sites Register (VSR) in accordance with the provisions of the Urban Regeneration and Housing (URH) Act 2015. The notice states that the Planning Authority is of the opinion that the site is a vacant site.

## 2.0 Site Location and Description

- 2.1. The appeal site is located at the southwestern fringe of the built up area of the town of Newbridge in County Kildare. The site is roughly rectangular in shape and has frontage onto two roads. The southern boundary abuts the R445 the main route running southwestwards from the town centre to Junction 12 of the M7 motorway. The northern boundary of the site has frontage onto Standhouse Road, a country road serving western areas of the town.
- 2.2. Parts of the eastern boundary of the site adjoin existing residential development the Elms which has rear gardens adjoining the common boundary. The site also has limited boundaries with existing residential development which also have frontage onto the R445 and Standhouse Road. The remaining boundaries adjoin the Keadeen Hotel along the southern section of the eastern boundary south of the Elms residential development and a national school to the north of the Elms development. There is an embankment along this boundary with a difference in level between higher lands to the east and the appeal site. The western boundary adjoins agricultural lands and has a mature hedgerow and trees along the boundary.
- 2.3. The land is not level with an overall fall from the southeast to the north west and there is great variation in levels arising from extractive workings on the site. The site currently has a large number of stockpiles of gravel of different grades in the southern area of the site and this amounts to the majority of the site. The mid portion of the site is overgrown with gorse. The northern portion, that accounts for approximately a third of the overall site is in use for arable agriculture.

### **3.0 Statutory Context**

#### **3.1. Urban Regeneration and Housing Act 2015 (as amended)**

- 3.1.1. The Notice issued in relation to residential lands and the accompanying report has assessed the site on the basis of the tests outlined in Section 5(1)(a) of the Act. The Notice is dated 26 October 2018. The Section 7(1) Notice identifies the reasons for placing the site onto the register and is accompanied by a map outlining the extent of the site to which the Notice relates.
- 3.1.2. It is noted that the definition of vacant or idle has been clarified by Section 63 of the Planning and Development (Amendment) Act 2018 which commenced upon coming into effect of the Act, 19 July 2018.

#### **3.2. Development Plan Policy**

##### **3.2.1. Kildare County Development Plan 2017-2023**

- 3.2.2. The Kildare County Development Plan 2017-2023 is the operative County Development Plan wherein Newbridge is designated as a Large Growth Town II.
- 3.2.3. Section 5.7 Regeneration

The Urban Regeneration and Housing Act 2015 aims to incentivise urban regeneration and facilitate increased activity in the housing construction sector. Under the Urban Regeneration and Housing Act 2015, the Planning Authority is required to identify vacant sites that fall within the definition set by the Act, maintain a register of vacant sites and apply a levy in respect of such sites. The sustainable development of vacant sites in Kildare will be promoted through the targeted application of the Urban Regeneration and Housing Act, 2015 (Vacant Site Levy) in towns that are the subject of a statutory Local Area Plan.

In order to enhance the appearance and socio economic performance of the towns, villages and settlements in the county, Kildare County Council will proactively engage with the members of each Municipal District in devising and delivering plans and projects for regeneration. Urban Renewal Plans shall be informed by a Town Centre Health Check and shall incorporate a public realm enhancement plan. Funding at both national and EU Level should be targeted to empower local communities to make a difference at a local level.

#### 3.2.4. Objective EO 22

Promote the sustainable development of vacant residential and regeneration sites in towns that are the subject of a statutory Local Area Plan, through the application of the Urban Regeneration and Housing Act 2015, Vacant Site Levy, on lands zoned for Town Centre, Regeneration and Residential uses.

#### 3.2.5. **Newbridge Local Area Plan 2013-2019**

3.2.6. This LAP provides that the site is zoned Objective C2 - New Residential. A movement objective traverses the western side of the site, together with new junction objectives.

### 4.0 **Planning History**

#### 4.1. Subject Site:

Planning authority reference **16/658**, ABP reference **PL09 .249038**. Permission for a mixed use development comprising 222 dwelling houses, a single storey creche facility and a 120 bedroom nursing home facility. Permission granted for a total of 280 residential units. April 2018.

Planning authority reference **06/547**. Permission granted for 190 residential units on the appeal site where the original application was for 196 residential units, a crèche and 670 metres of distributor road and the removal of gravel and other material.

Planning authority reference **08/1468**. Permission granted for a variation of P.A. Ref. No 06/547 in relation to the removal of soil and material on the site.

Planning authority reference **12/615**. Permission granted for an extension of the duration of the permission granted to P.A. Ref. No 06/547 until 01/04/2018.

### 5.0 **Planning Authority Decision**

#### 5.1. **Planning Authority Reports**

- A Vacant Sites report outlining, zoning, brief planning history, brief site description. The site is vacant.

The planning authority's submission is accompanied by site location maps, the zoning map and an aerial photograph with the site outlined. Land registry details are also submitted. The notices are included together with a report on any submissions received, which in this case were none.

## **5.2. Planning Authority Notice**

Planning Authority decided under section 7(3) to issue a notice on 26 October 2018. The section 7(1) notice was issued on the 15 June 2018 and referenced criteria that relates to section 5(1)(a) of the Act and stated that the site will be entered onto the Vacant Sites Register. The notice was issued to Cowlara Limited, Forest Park, Mullingar, County Westmeath.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

6.1.1. The landowner has submitted an appeal to the Board, against the decision of Kildare County Council to place the subject site on the Register. The grounds of the appeal can be summarised as follows:

- The planning authority has not demonstrated the need for housing in the area. The planning report that accompanies the Council's decision to place the site on the register is rudimentary and contains no information in relation to any of the requirements of section 6(4) of the Act.
- The planning authority has not demonstrated that the site is suitable for housing, as required under the tests outlined in section 6(5) of the Act. The site could not be serviced by wastewater infrastructure. At the time the notice was served the project lands that would address the deficiencies regarding wastewater treatment in the area were the subject of judicial review proceedings (Newbridge Interceptor Sewer). This matter has now been resolved as of the 27 July 2018. The site was therefore not a vacant site because for the 12 months prior to the notice, the site could not be serviced.

The appeal is supported by the section 7(3) notice and an email correspondence from Irish Water.

### **6.2. Planning Authority Response**

A response received from the Planning Authority to the grounds of appeal are summarised as follows:

- Newbridge is subject to a Local Area Plan, the Urban Regeneration and Housing Act 2015 applies to all sites within the plan area and meet the relevant criteria.
- A housing needs assessment was carried out for Newbridge, dated 12 June 2018. The assessment was carried out in accordance with the criteria set out by the 2015 Act. Sites have been specifically zoned in the LAP for residential uses and these sites will deliver the anticipated housing need for Newbridge.
- The site, land use zoning parcel C2, has a previous planning permission for 190 dwellings. More recently, the Board granted permission for '220' dwellings on the 16 April 2018. Notwithstanding, the apparent lack of water services, permission was granted by the Board on the 16 April 2018 without any pre-commencement conditions in relation to the Liffey Valley Regional Sewerage Scheme Contract 2A Newbridge Interceptor Sewer. The lands were therefore suitable for housing at the time the site was entered on the register.
- The subject site was inspected on the 30 May 2018 and considered to be vacant, the site assessment and recommendation were made on 12 June 2018.

The planning authority's submission is accompanied by the Newbridge Town Housing Need Assessment dated 12 June 2018.

### 6.3. Further Submissions

With regard to section 6(5)(b) of the Act, the appellant reiterates the timing of various events as follows:

- At the time the notice was served (26 October 2018), land required by Irish Water to deliver water service infrastructure was the subject of judicial review proceedings. The lands could not be serviced during the 12 months prior to the placement of the site on the register, so the lands could not be considered vacant as described by the Act.

## 7.0 Assessment

### 7.1. Introduction

- 7.1.1. An appeal under the amended section 9 of the Act, requires that the burden of showing that the site was not a vacant site for the 12 months preceding the date of entry on the Register is on the owner of the site. Section 9(3) of the Act states that the Board shall determine whether the site was a vacant site for the duration of the 12 months concerned or was no longer a vacant site on the date on which the site was entered on the register. The subject site was entered onto the Kildare County Council VSR on the 26 October 2018.
- 7.1.2. The Notice has been issued under the provisions of Section 5(1)(a) and (2) of the Act. The assessment undertaken by the Planning Authority to inform the placement of the site on the Register, which I outline in section 5.1 and again in section 6.2 above, refers to the tests included for residential lands under section 5(1)(a) and by reference to Section 6(4) and (5) of the Act as is required for lands zoned for residential purposes.
- 7.1.3. The main concerns of the appellant are that the site has not been properly assessed to take account of infrastructural deficiencies that were present during the 12 months prior to the placement on the register. There is also a broad concern that the planning assessment made by the Council was not thorough enough and fails to meet the requirements of the 2015 Act. The planning authority responded by including a more robust planning assessment and their assessment of housing need for Newbridge.

### 7.2. Vacant/Idle

- 7.2.1. Section 5(1)(a)(iii) states the following:

*the site, or the majority of the site is —*

*(I) vacant or idle, or*

*(II) 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 purpose of such provision, provided that the most recent purchase of the site occurred —*

*(A) after it became residential land, and*

*(B) before, on or after the commencement of section 63 of the Planning and Development (Amendment) Act 2018.*

7.2.2. This section of the 2015 Act seeks to clarify the purpose or use of a site in connection with any change in ownership. The Board should note that the relevant period that concerns this appeal and for the purposes of the 2015 Act falls either side of the 19 July 2018 enactment date of the Planning and Development (Amendment) Act 2018. This has only minor relevance for a number of factors. It appears that the ownership of the site has changed since the lands were first zoned for residential purposes. The appellant has not put forward any statement to contend that the site has been or is in use. The question as to whether the site was a vacant site for the relevant time period, 12 months prior to the placement of the site on the register, can only really be answered by the planning authority.

7.2.3. The relevant time period is a very important factor and one upon which the 2015 Act is quite plain in its interpretation, section 6(2) states as follows:

*A planning authority shall enter on the register a description, including a map, of any site in its functional area which was, in the opinion of the planning authority, a vacant site for the duration of the 12 months preceding the date of entry.*

7.2.4. All other sections pertinent to this appeal refer back to the 12 month period. In this instance, the planning authority entered the site on the register on 26 October 2018, having conducted their site visit on the 30 May 2018, less than five months prior to the date of entry on the register. I am not satisfied that the relevant time period has elapsed in order to allow a reasonable assessment of the site's condition in terms of a use or purpose. For this reason alone the site should be removed from the register. This does not preclude the planning authority from recommencing the process and implementing the 2015 Act in terms of allowing the relevant 12 month time period to elapse.

### **7.3. Housing need and suitability of the site for housing**

7.3.1. Firstly, the appellant has in simple terms questioned the need for housing in the area, this is articulated by the criticism levelled at the planning authority assessment of the site for entry on the register. The planning authority have responded by addressing the issue of housing need through the housing strategy and core strategy



of the development plan and a housing needs assessment carried out for Newbridge dated 12 June 2018. The planning authority's approach to identifying housing need for the area is evidence based and accords with the requirements set out in section 6(4) of the 2015 Act. I am satisfied that there is a housing need for the area, the lands have been identified to support the growth of Newbridge and zoned for residential purposes in the LAP.

- 7.3.2. Secondly, the appellant raised questions in relation to whether the site is suitable for housing, as wastewater infrastructure to service the lands has been held up by judicial review proceedings. These proceedings have only recently been settled and the appellant contends that the site was not suitable for the provision of housing, under the terms of section 6(5)(b) of the 2015 Act, that states:

*A planning authority, or the Board on appeal, shall determine whether or not a site was suitable for the provision of housing for the purposes of this Part by reference to—*

*(b) whether the site was served by the public infrastructure and facilities (within the meaning of section 48 of the Act of 2000) necessary to enable housing to be provided and serviced,*

The planning authority point out that the lands in question have the benefit of a current planning permission, in which no conditions were attached to prevent development from proceeding. The relevant permission was granted by the Board in April 2018, PL09-249038 refers. I see no conditions in this permission that restrict or delay development of the site due to infrastructural deficiencies. I also note that under planning authority reference 12/615, permission was granted for an extension of the duration of the permission granted to under P.A. Ref. No 06/547 until 01 April 2018. Consequently, I am satisfied that the site is and was suitable for housing in full accordance with the criteria set out by section 6(5) of the 2015 Act.

- 7.3.3. In terms of the need for housing in the area and the suitability of the site for housing I am satisfied that all the tests required by section 6(4) and (5) are met. The site is and has been for some time suitable for housing and satisfies a housing need recognised and adequately described by the planning authority. However, as outlined above, I am not satisfied that the site has been entered on the register in an appropriate manner. The landowner has been unduly disadvantaged because the relevant time

period of 12 months has not been allowed to elapse. It is this procedural error that in my mind requires the site to be removed from the register.

## 8.0 Recommendation

8.1. I recommend that in accordance with section 9(5) of the Urban Regeneration and Housing Act 2015, the Board should cancel the Notice stating that the site at Ballymany, Newbridge, Co Kildare. was a vacant site for the 12 months concerned. Therefore, the entry on the Vacant Sites Register on the 26 October 2018 shall be removed.

## 9.0 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 could not have been a vacant site within the meaning of section 5(1)(a) of the Urban Regeneration and Housing Act 2015 as amended, for the reason that the assessment of the site did not account for the duration of the 12 months preceding the date of entry on the register in accordance with section 6(2) of the 2015 Act,

the Board is not satisfied that the site was a vacant site for the relevant period.

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Stephen Rhys Thomas  
Planning Inspector

28 February 2019